



**SIXTH
ANNUAL REPORT
OF THE OFFICE OF THE
PUBLIC COMPLAINTS COMMISSIONER**

December 21, 1986 to December 20, 1987

OFFICE OF THE PUBLIC
COMPLAINTS COMMISSIONER

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June 1988

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Dear Mr. Attorney and Madam Solicitor General:

Pursuant to Section 3 (7) and Section 3 (8) of the
Metropolitan Toronto Police Force Complaints Act, 1984, I am
pleased to enclose herein the Sixth Annual Report of the
Office of the Public Complaints Commissioner.

Sincerely yours,

CLARE E. LEWIS
Public Complaints Commissioner

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encl.



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PART I

**Overview of Complaints System
Expansion of System**



PART I - OVERVIEW OF COMPLAINTS SYSTEM;
EXPANSION OF SYSTEM

A. AN OVERVIEW

The Second Annual Report of the Office of the Public Complaints Commissioner, which covered the 1983 year, included a discussion of how the complaint process functions. The Third Annual Report explained the changes implemented by the new legislation, the Metropolitan Toronto Police Force Complaints Act, 1984, which became law on December 21, 1984.

A basic premise of the system is that the police force has the responsibility of performing initial investigation into complaints by members of the public. The vast majority of complaints are investigated initially by the police. The Act states that the Commissioner can take over an investigation on request of the Chief of Police, or when the Commissioner has reasonable grounds to believe that there has been undue delay or other

exceptional circumstances in the conduct of the investigation, or at any time 30 days or more after the complaint has been filed. The major part of the Commissioner's function, therefore, is not initial investigation but rather the monitoring of the police investigation into the complaint. The Commissioner also undertakes review and reinvestigation of the complaint at the request of the complainant after the Chief of Police has reached a decision on the complaint.

The monitoring function is possible because the Commissioner gets a copy of all complaints as soon as they are filed, as well as a copy of all monthly investigative reports as they are completed. The Commissioner maintains on-going communication with the Public Complaints Investigation Bureau in regard to general issues pertaining to investigation, as well as with reference to particular files.

If the complainant requests a review, the Public Complaints Commissioner can reinvestigate the matter, and must make a decision about the complaint on the basis of the available evidence. If the Commissioner agrees with

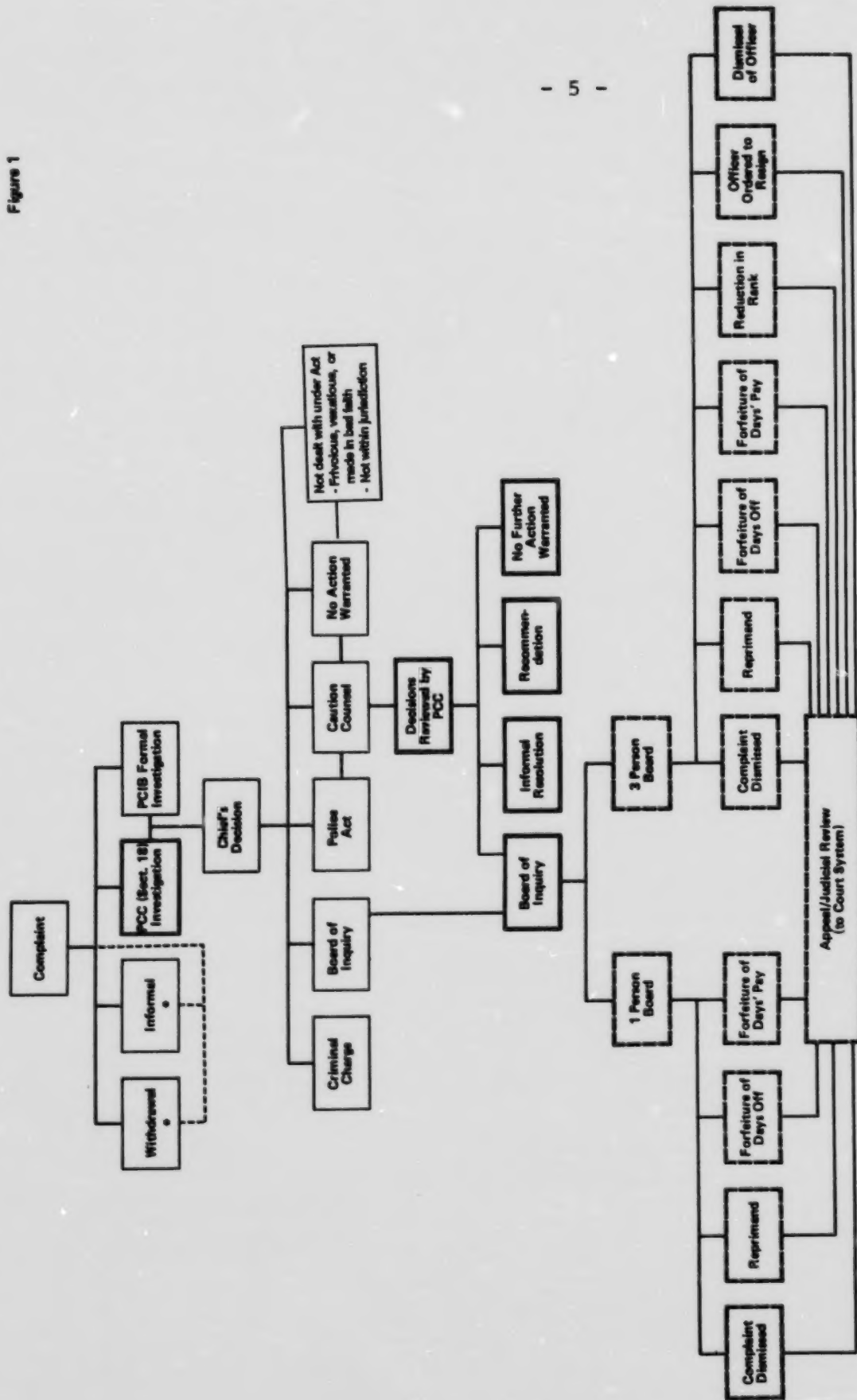
the decision of the Chief of Police, a review report is written and sent to the complainant, the subject officer, and the Chief of Police. Whether the Commissioner agrees or disagrees with the Chief of Police, recommendations may be made aimed at preventing the problem encountered by the complainant from recurring. Finally, if the Commissioner believes it is required in the public interest, the case may be sent to a Board of Inquiry. The Commissioner has no further decision-making power in the case.

A Board of Inquiry is a panel of either one or three civilians (the number depends on whether the complaint is minor or serious). The Board has the responsibility of holding a hearing, much like a court hearing, into the complaint. The officer is usually represented by counsel, and the complainant may also be represented. A lawyer representing the Attorney General presents the case, witnesses are called, evidence is presented, and arguments of law are made. At the end of the hearing, the Board decides whether the officer is guilty of misconduct. If the Board concludes that the officer is guilty of misconduct, it may discipline the officer. Penalties range from a reprimand to dismissal from the police force.

In a chart on the following page, an attempt is made to show the possible stages of a complaint. These stages can be roughly divided into the police investigation and resolution stage, the Public Complaints Commissioner review stage, and the Board of Inquiry stage.

Please note that in the interest of clarity, the chart illustrates only the most commonly-occurring events in the complaint system.

Figure 1



* When a complaint is withdrawn or informally resolved, the Commissioner reviews the file and, in certain circumstances, has the power to overturn the withdrawal or the informal resolution. In these cases, the complaint continues through the system.



B. EXPANSION OF THE SYSTEM

On November 4, 1987, the Attorney General of Ontario introduced legislation to permit the expansion of the Office of the Public Complaints Commissioner. An Act to amend the Metropolitan Toronto Police Force Complaints Act, 1984, which is currently Bill 4 before the legislature, would allow any municipality in Ontario to choose to take advantage of the services of the Office of the Public Complaints Commissioner in respect of local complaints against the police. Under the proposed legislation, a local office of the Public Complaints Commissioner would be established in each municipality choosing to participate in the system. The system would be identical to that in operation in Metropolitan Toronto, with investigation in the first instance conducted by a specially designated unit of the local police force, and decisions on appropriate action made by a designated senior officer of the police force. As with the Toronto system, the Public Complaints Commissioner would have a monitoring function and a duty to conduct reviews upon request by any member of the public who is not satisfied with the resolution of his or her

complaint by the local police force. If, following a review, the Commissioner determined that the complaint should be heard by a Board of Inquiry, its members would be drawn from a panel established for the local area.

The legislation that would allow municipalities to choose this system has not yet been passed into law. A copy of the proposed legislation is included as Appendix F to this report.

PART II
Research and Statistics

PART II - RESEARCH AND STATISTICS

A. INTRODUCTION

Since its inception, the Office of the Public Complaints Commissioner has routinely conducted research on data taken from all closed complaint files. This research activity permits the examination of the caseload from a statistical perspective, allowing trends to be identified over the years. Careful analysis and study of complaints can also lead to suggestions for improving policing generally and to specific recommendations for change. In addition, the research enables the Commissioner to evaluate the functioning of the complaints process.

In 1987 there were 747 cases closed by the Office of the Public Complaints Commissioner. A "case" involves a single complainant making one or more allegations based on a single incident or series of incidents. A case is closed when all outstanding issues with respect to the allegations have been resolved. Because cases vary in complexity, they vary in duration. Some cases may be resolved very quickly, while others which require extensive investigation may last over a year.

B. RESEARCH DATA

1. The Incident

Every complaint results from an incident in which a member of the public has some contact with the Metropolitan Toronto police. The first incident may evolve into more than one contact in more than one location. The location of the primary incident is shown in Table 1. The locations are listed by frequency of occurrence, with the most common being listed first. As in previous years, the most common location of the primary incident was the street (46.7%). The next most common location was a private residence (17.9%).

A single incident may give rise to several allegations. The listing of allegations is presented in Table 2. The majority of complainants (63.6%) made more than one allegation. In total, 1,518 allegations were made. For each case, details of only the six most serious allegations in each case were recorded.

TABLE 1

<u>Location of Incident</u>	<u>Number</u>	<u>Percent</u>
Street	349	46.7
Residence	134	17.9
Police Building	120	16.1
Public Place	85	11.4
Police Vehicle	33	4.4
Plaza/Mall	14	1.9
Schoolyard/Park	9	1.2
Other	<u>3</u>	<u>0.4</u>
TOTAL	747	100.0

The 1,518 allegations are presented in Table 2. There are two ways of examining the distribution of allegations. One way is by considering the total number of allegations. Thus, the 386 allegations of assault represent 25.4% of the 1,518 allegations that were documented. The other way is by considering the number of cases. Here the 386 allegations of assault represent 51.7% of the 747 cases. Both percentage distributions are presented in Table 2 and Figure 2.

The 23 categories of allegations, grouped into four major areas, are presented in Table 2. The most common allegation is that officers failed to act according to proper police procedure (36.9%). This was closely followed by threatening or abusive behaviour (33.9%) and by physical assaults/excessive use of force (25.4%). Personal misuse of authority was cited in (3.8%) of the allegations. It was noted that in 48 or 6.4% of the cases, there was an allegation of improper use of baton. These allegations included physical assault or improper threatening use of the baton. In 24 or 3.2% of the cases, complainants alleged improper handling of police firearms.

The Commissioner, given the diverse ethnic and racial composition of Metropolitan Toronto, is particularly concerned with any allegation of ethnic or racial bias by the police. In 4.9% or 37 of the complaints, there was some mention of a racial or ethnic statement being made. In a further 23 or 3.1% of the cases, a racial or ethnic statement was not alleged to have been made by the police, but the complainants said that they perceived the treatment they received as racially or ethnically motivated.

In 4 cases there was some reference to a disparaging statement about homosexuality.

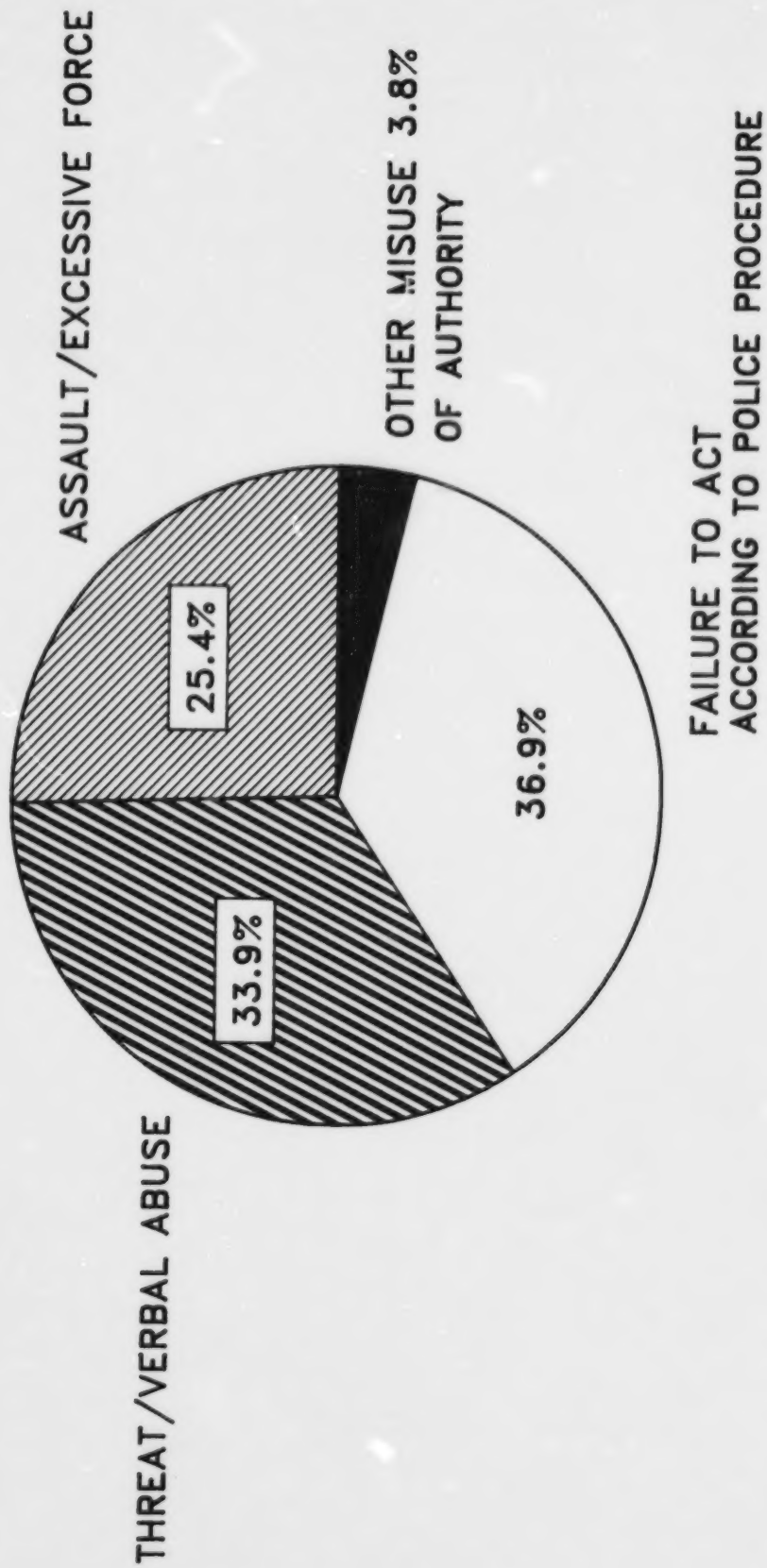
TABLE 2

TYPE OF ALLEGATION

(N = 747)

<u>Physical Assault/Excessive Force</u>	<u>Number</u>	<u>% of Allegations</u>	<u>% of Cases</u>
Assault	85	5.6	11.4
Assault with Injury	250	16.4	33.5
Sexual Assault	6	0.4	0.8
Assault while Restrained	<u>45</u>	3.0	6.0
	386		
<u>Threat or Verbal Abuse</u>			
Incivility/Verbal Abuse	325	21.4	43.5
Harassment/Threat	149	9.8	20.0
Implied Harassment/Threat	34	2.2	4.6
Verbal Sexual Harassment/Threat	<u>7</u>	0.5	0.9
	515		
<u>Failure to Act According to Police Procedure</u>			
General	168	11.1	22.5
Neglect of Duty	117	7.7	15.7
Damage/Mishandle Property	86	5.7	11.5
Failure to I.D. Self	33	2.2	4.4
Improper Arrest/Detention	37	2.4	5.0
Improper Search/Entry	48	3.2	6.4
Improper Charge	54	3.6	7.2
Improper Use of Discretion	<u>16</u>	1.0	2.2
	559		
<u>Personal Misuse of Authority</u>			
Deceit	16	1.0	2.2
Breach of Confidence	9	0.6	1.2
Intoxication	3	0.2	0.4
Improper Driving	17	1.1	2.3
Theft/Corruption	7	0.5	0.9
Lying Under Oath	4	0.3	0.5
Other	<u>2</u>	0.1	0.3
	58		
	<u>1518</u>	<u>100.0</u>	
TOTAL	1518	100.0	

Figure 2
TYPE OF ALLEGATION



In describing the allegations, the actual incident which lead to the contact between the complainant and the police was noted. It must be remembered that this notation represents the first point of contact; others may have occurred as the situation evolved. The three most common points of contact were traffic/accident investigation (26.1%), arrest (22.8%), and criminal investigation (21.7%). The remaining incidents are listed in Table 3. In 285 or 38.2% of the cases, no charges were laid. The complainant was charged by the police in 438 or 58.6% of the cases. The details are presented in Table 4. In 98.6% of these cases, the charge was laid prior to the complaint being filed.

An example of an incident as taken from the 1987 files, for each precipitating factor, is presented below:

Traffic/Accident Investigation:

The complainant was stopped for speeding. During the course of issuing the tickets, the complainant alleged the officer snickered at him, called him a punk and swore at him.

At Time of Arrest:

The complainant was arrested at home. The complainant requested that he be allowed to dress and put on shoes before being taken to the station. The complainant alleged that the officer refused this request, assaulted him, and swore at him and his girlfriend.

Criminal Investigation:

The complainant was arrested on a series of charges and taken to the station. While in the investigation room, the complainant alleged he was assaulted by the two arresting officers as well as other unidentified officers. The complainant alleged he was assaulted again in the cells and requested medical attention which was allegedly refused.

Parking Violation:

The complainant's business vehicles were parked on the street due to construction. These vehicles were issued parking tickets. The complainant alleged that her vehicles had been singled out for parking violations while other vehicles were not tagged. This situation persisted on repeated occasions, causing the complainant to allege harassment by the police.

Domestic Incident:

During a domestic dispute with the complainant, his common-law wife left. Subsequently, the police arrived and the complainant was arrested. He alleged that he was assaulted with a baton during the course of the arrest.

By-Law:

The complainant was standing by his car listening to the radio. A police officer arrived and the complainant alleged that, prior to speaking to him, he turned off the car radio. The complainant alleged that the officer grabbed him and spoke to him rudely.

Landlord/Tenant Issue:

The complainant and former landlord were in conflict. The landlord would not allow the complainant to enter his apartment to remove his possessions. The complainant called the police. The complainant alleged that the officer did not allow him to explain the situation, pulled him by his jacket, repeatedly pointed a finger in his face, accused him of having a chip on his shoulder, and made a racial comment to him.

I.D. Request:

The complainant and friends were hanging around a school playground. Police officers approached them and asked the complainant for I.D. The complainant stated that his I.D. was in a car in the parking lot. The police allegedly shoved a flashlight into the complainant's stomach. The complainant allegedly tried to block the flashlight and an altercation resulted. The complainant was arrested and he alleged that he was not told what he was charged with nor read his rights. He further alleged that his request for medical attention was refused.

Other:

The complainant was subpoenaed as a police witness and gave evidence at a trial. The officer appeared angry when the charges were dismissed against the accused. When the complainant requested witness fees from the court clerk, the officer allegedly yelled at him, told him that he had the authority to withhold payment, and stated that he would not receive the fee.

None:

The complainant stated that he was stopped and searched by a police officer on the way home from school. He alleged that the officer did not tell him why he was being searched and that he was not arrested.

TABLE 3

<u>Precipitating Factor</u>	<u>Number</u>	<u>Percent</u>
Traffic/Accident Investigation	195	26.1
At Arrest	170	22.8
Criminal Investigation	162	21.7
Parking	28	3.7
Domestic Incident	26	3.5
By-Laws	21	2.8
Landlord/Tenant Issues	8	1.1
Request for I.D.	7	0.9
Other	23	3.1
None Apparent	<u>107</u>	<u>14.3</u>
TOTAL	747	100.0

TABLE 4

<u>Charge Against Complainant</u>	<u>Number</u>	<u>Percent</u>
Highway Traffic Act	236	34.6
Obstruct/Assault Police	78	11.4
Assault	74	10.9
Criminal Driving Offence	35	5.1
Theft/Possession	34	5.0
Property Offence	27	4.0
Liquor Offence	25	3.7
Cause a Disturbance	20	2.9
Drug Offence	20	2.9
Weapons	19	2.8
Robbery/Serious Violence	15	2.2
Municipal By-Laws	18	2.6
Break & Enter and Related	17	2.5
Public Mischief	5	0.7
Other	55	8.1
Unknown	<u>4</u>	<u>0.6</u>
TOTAL	682	100.0

There were 275 (36.8%) complainants who alleged some sort of physical injury occurring as a result of a confrontation with police. Of these, 63 (22.9%) alleged more than one injury. The details of these 338 alleged injuries are presented in Table 5. Of the alleged injuries, 66.5% involved cuts and bruises.

On the basis of the description in the allegations, medical reports and photographs, the P.C.C.'s researcher made a subjective evaluation of injuries. The criteria used by the researcher were as follows:

MINOR INJURIES: require little or no medical attention, such as scratches, minor headaches, etc.

MODERATE INJURIES: have visible or identifiable symptoms, such as cuts, bruises, etc.

SERIOUS INJURIES: such as fractures, teeth injuries, cuts deep enough to require stitches.

TABLE 5

<u>Alleged Injuries to Complainant</u>	<u>Number</u>	<u>Percent</u>
Cuts/Bruises	225	66.5
Internal	48	14.2
From Handcuffs	44	13.0
Fractures	11	3.3
Teeth	8	2.4
Other	<u>2</u>	<u>0.6</u>
TOTAL	338	100.0

Of the 275 complainants who alleged injuries, 125 (45.4%) of these injuries were classified as minor, 97 (35.3%) were seen as being moderate, and 20 (7.3%) were serious. In 12% of the cases, there was insufficient information to determine the severity of injury. Of the complainants who claimed injuries, 152 (55.3%) sought medical attention or treatment of their injuries.

2. Characteristics of Complainants

In 77.5% of the cases, the complainants were male. Information as to age was given by 649 complainants. Of these, 218 (33.6%) were 25 years old or younger, 342 (52.7%) were in the 26 to 45 year age range. The remaining complainants were over 45 years old.

3. Characteristics of Officers

Most allegations (90.6%) involved fewer than five officers. Specific data were collected on the first four officers listed in each complaint. The rank of these officers is shown in Table 6. Over three quarters (76.4%) of the officers cited in the complaint were constables in the First Class category (usually, an officer must have

served at least four years before gaining First Class status). Over 85% of the officers had five or more years experience on the police force (Table 7).

4. Police Division in which Complaint Arose

The police divisions in which the alleged incidents occurred are listed in Table 8. The largest number of complaints occurred in 52 Division (99, 13.3%). This division is responsible for the downtown core of Toronto. The next highest number of complaints arose in 14 Division (84, 11.3%). 14 Division is adjacent to, and west of 52 Division.

TABLE 6

<u>Rank of Police Officer</u>	<u>1986</u>		<u>1987</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Inspector or higher	-	-	8	0.7
Staff Sergeant	25	2.3	34	2.8
Sergeant	111	10.2	121	9.9
Constable 1	840	77.1	934	76.4
Constable 2	37	3.4	30	2.4
Constable 3	34	3.1	41	3.4
Constable 4	13	1.2	30	2.4
Not Specified	<u>30</u>	<u>2.8</u>	<u>24</u>	<u>2.0</u>
TOTAL	1090	100.1	1222	100.0

TABLE 7

<u>Years of Service</u>	<u>Number</u>	<u>Percent</u>	
Under 1 Year	25	2.0	
1 to 2	50	4.1	
3 to 4	78	6.4	
5 to 10	349	28.7	] 85.5
11 to 15	423	34.6	
16 to 20	164	13.4	
Over 20 Years	108	8.8	
Not Specified	<u>25</u>	<u>2.0</u>	
TOTAL	1222	100.0	

TABLE 8

<u>Division of Occurrence</u>	<u>Number</u>	<u>Percent</u>
11	38	5.1
12	21	2.8
13	33	4.4
14	84	11.3
21	33	4.4
22	15	2.0
23	17	2.3
31	44	5.9
32	63	8.4
33	21	2.8
41	50	6.7
42	33	4.4
43	27	3.6
51	36	4.8
52	99	13.3
53	23	3.1
54	24	3.2
55	57	7.6
C.T.U.	4	0.5
E.T.U.	5	0.7
W.T.U.	1	0.1
Unknown	<u>19</u>	<u>2.6</u>
TOTAL	747	100.0

5. Complaint Process Data

(a) Filing a Complaint

Members of the public can register a complaint about police actions at any police station, at the P.C.I.B. of the Metropolitan Toronto Police, or at the Office of the Public Complaints Commissioner at 157 Bloor Street West. Complaints were registered at a police station in 42.9% of the cases, at the P.C.I.B. in 14.7% of the cases, and at the Office of the Public Complaints Commissioner in 37.4% of the cases. The balance were initiated elsewhere and are presented in Table 9 (see also Figure 3). Almost one half (44.3%) of the complaints were filed either the day of the alleged incident or on the next day. Most complaints (86.7%) were filed within a month of the occurrence (Table 10).

(b) Complaint Investigation

Most complaints are initially investigated by the Public Complaints Investigation Bureau of the Metropolitan Toronto police force. That Bureau is staffed by senior

officers who are charged solely with the responsibility of investigating public complaints. The Public Complaints Commissioner has a statutory duty to monitor this initial investigation. On occasion, the Commissioner may undertake the initial investigation of a complaint or take over an investigation begun by the Public Complaints Investigation Bureau.

TABLE 9

<u>Location Complaint Filed</u>	<u>Number</u>	<u>Percent</u>
Police Station	321	42.9
Office of the Public Complaints Commissioner	279	37.4
P.C.I.B.	110	14.7
Chief of Police	23	3.1
Police Commission	3	0.4
Attorney General	2	0.3
Human Rights Commission	1	0.1
Other	<u>8</u>	<u>1.1</u>
TOTAL	747	100.0

TABLE 10

<u>Days - Occurrence to Filing</u>	<u>Number</u>	<u>Percent</u>
Same Day	211	28.2
Next Day	120	16.1
2 - 31 Days	317	42.4
32 - 60 Days	43	5.8
61 - 90 Days	18	2.4
Over 90 Days	27	3.6
Unspecified	<u>11</u>	<u>1.5</u>
TOTAL	747	100.0

FIGURE 3
LOCATION WHERE COMPLAINT FILED
PERCENT DISTRIBUTION



ONLY MOST FREQUENT LOCATIONS PLOTTED

The civilian staff of the P.C.C. can conduct the initial investigation of a complaint upon request by the Chief of Police, when there is unreasonable delay or other exceptional circumstances in the conduct of the investigation, or after receipt of the first interim report from the P.C.I.B. The Office of the Public Complaints Commissioner carried out 41 initial investigations in the 1987 year.

Whether an investigation is conducted by the Public Complaints Investigation Bureau or the Office of the Public Complaints Commissioner, the initial decision as to whether discipline is warranted is made by the Chief of Police after the investigation is completed.

(c) Informal Resolutions

In 22 cases, complaints were resolved informally. A complaint is properly resolved informally if both the complainant and subject officer(s) agree in writing to the resolution. The reasons given for the informal resolution are presented in Table 11. In 9 cases the reason given was that the complainant was content to make the force aware of

the incident. In a further 6 cases the informal resolution was effected when the officer either admitted, apologized or explained his/her actions to the satisfaction of the complainant.

In 4 cases, informal resolutions were coupled with disciplinary action. Officers were advised or spoken to by their superiors in 3 cases, and one case resulted in the officer being counselled.

(d) Withdrawals

In 186 of the cases, the complaints were withdrawn by the complainant. This amounted to 24.9% of all cases closed in the 1987 year. Thirty-one of these withdrawals were attributed to an admission of error on the part of the complainant. The error was usually explained by the complainant having been intoxicated at the time of the incident so that a clear recollection of the events was impossible. Another 31 complainants who withdrew their complaints stated their desire merely to call attention to the incident or put it on record rather than follow through with an investigation. Legal advice was cited by 26

complainants as the reason for withdrawing their complaints. Another 16 withdrew their complaints stating that all their concerns or allegations had been dealt with in court. In a further 15 cases, the reasons for withdrawal were not stated. Thirteen complainants reported personal reasons for withdrawing their complaints. The remaining 54 cases were withdrawn for miscellaneous reasons. The full list of reasons for withdrawals is presented in Table 12.

TABLE 11

<u>Analysis of Informal Resolutions</u>	<u>Number</u>	<u>Percent</u>
Complainant content to make police aware of complaint	9	40.9
Officer admitted allegation/ apologized or explained actions	6	27.3
Officer advised/spoken to by superiors	3	13.6
Officer counselled	1	4.6
Other	<u>3</u>	<u>13.6</u>
TOTAL	22	100.0

TABLE 12

<u>Reasons for Withdrawal</u>	<u>Number</u>	<u>Percent</u>
Complainant admits error	31	16.6
Complainant wanted to draw attention to incident	31	16.6
Legal advice	26	14.0
Concerns dealt with in court	16	8.6
Not stated	15	8.1
Personal reasons	13	7.0
Other	<u>54</u>	<u>29.1</u>
TOTAL	186	100.0

(e) Decisions by the Chief of Police

539 complaints (72.1% of files closed in 1987) which were neither withdrawn nor informally resolved were investigated by either the Public Complaints Investigation Bureau or the Office of the Public Complaints Commissioner. Throughout the investigation, investigative reports are sent every 30 days to all interested parties including the complainant, the subject officer and the Office of the Public Complaints Commissioner. Whether the investigation is conducted by the P.C.I.B. or the Office of the Public Complaints Commissioner, upon completion, the file is presented to the Chief of Police or his designated deputy for decision.

In most, (93.1%), of these cases the Chief concluded that no further action was warranted. In 295 of these cases, the Chief stated that there was insufficient evidence to support the complaint. In 59 of these cases, the Chief noted that the officer acted according to police procedure. In 58 of these cases, the Chief concluded that the evidence supported the officers' version of events. In five of these cases, other reasons were given for no action being taken. In 85 (15.8%) of the 539 cases, the Chief concluded that the complaint would not be dealt with under the Act. In 67 of these cases, the Chief decided the

complaints were frivolous, vexatious or made in bad faith. In the remaining 18 cases, the Chief decided the complaint was not within the jurisdiction of the Act.

In a total of 41 cases, some discipline of the accused officer(s) was imposed. Four of these cases involved informal resolution, whereas 37 were formal decisions made after full investigation. See Table 13 for a complete breakdown of discipline imposed by the Chief. Discipline choices available to the Chief of Police in these circumstances are as follows:

Officer Advised/Spoken To: Without making a judgment whether there was substance to the allegation, a superior officer informally discusses the case with the subject officer and suggests better ways of dealing with the situation.

Counsel: A superior officer acknowledges that there is substance to the allegation, but that the conduct was judged to be unintentional or resulted from inexperience. A counsel is recorded on the police officer's file at headquarters.

Caution: As above for Counsel: In addition, the officer is warned that further misconduct will result in charges pursuant to the Police Act.

Charge Under Police Act: The Chief of Police may charge the officer under the Police Act. In these cases, an internal disciplinary tribunal is convened. Misconduct must be proved beyond a reasonable doubt. Employment penalties can be imposed.

Board of Inquiry: The Chief of Police may refer the case to a public hearing before a civilian board of inquiry, under the Metropolitan Toronto Police Force Complaints Act, 1984. Misconduct must be proved beyond a reasonable doubt and employment penalties can be imposed.

Charge Under Criminal Code: The Chief of Police may cause the subject officers to be charged under the Criminal Code.

TABLE 13

Discipline Taken Against Police Officers

Nature of Resolution by Complaint

<u>Action</u>	<u>Informal</u>	<u>Formal</u>	<u>Total</u>
Officer Spoken to/Advised	3	7	10
Counsel	1	11	12
Counsel and Caution	-	10	10
Police Act	-	8	8
Referred to Board	<u>-</u>	<u>1</u>	<u>1</u>
TOTAL	4	37	41

Of the 37 cases in which discipline was imposed after full investigation, the Chief counselled the officer in 11 cases, and imposed a caution and counsel in 10 cases. In 7 cases the officer was advised or spoken to. In one case the Chief of Police called a Board of Inquiry. Pursuant to the Chief's decision to charge officers under the Police Act, 8 Police Act disciplinary trials were completed in the 1987 reporting year. In 1 case the charge against the officer was dismissed. In 2 cases the hearing was withdrawn as the officers had resigned. In 5 cases the officer was found guilty of a disciplinary offence. Two of these cases resulted in a forfeiture of 12 days off and 2 cases resulted in a forfeiture of 2 days off. The fifth case resulted in a forfeiture of 3 days off.

In all, 11 criminal charges against police officers were disposed of in the 1987 reporting year. One charge had been laid by the Chief of Police and 10 by complainants. In 8 cases, the charges were dismissed and in 3 cases, the charges were withdrawn.

(f) Summary of Disposition of Complaints

Of the 747 complaints resolved in the 1987 reporting year the following dispositions took place: (See Figure 4)

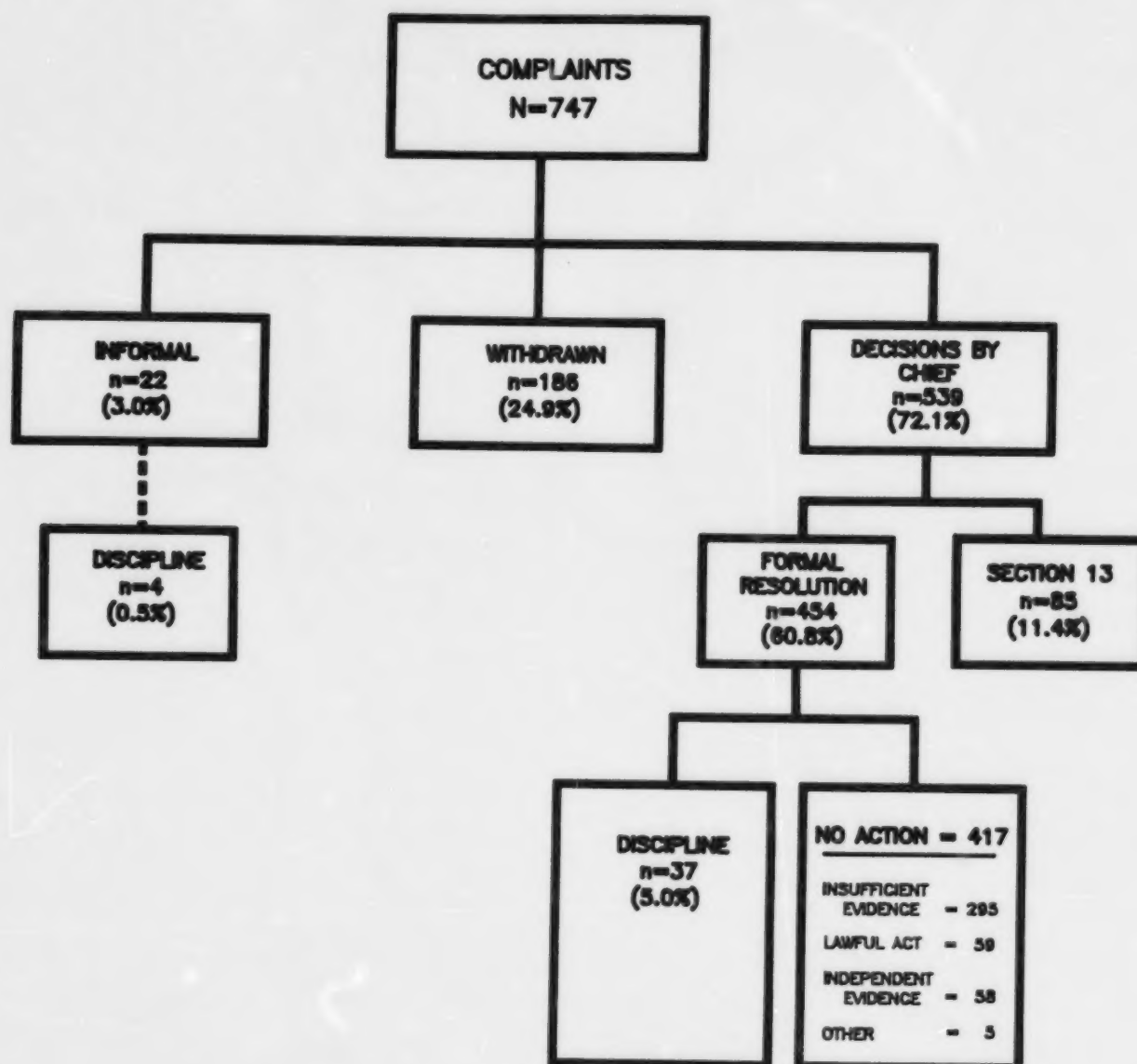
WITHDRAWALS - 186

INFORMAL RESOLUTIONS - 22

DECISIONS BY CHIEF - 539

An analysis was made comparing the type of allegation with the nature of the complaint resolution (Table 14). The major difference was that the complaints which were resolved informally were less likely to involve an allegation of assault. There were no other noteworthy differences.

FIGURE 4
INITIAL DISPOSITION OF COMPLAINTS



Note: The percentages are relative to the
TOTAL number of complaints

Table 14
COMPLAINT RESOLUTION BY TYPE OF ALLEGATION

ALLEGATION	INFORMAL		WITHDRAWN		FORMAL		SECTION 13		TOTAL	
	n	%	n	%	n	%	n	%	n	%
Assault/ Excessive force	1	2.6	106	29.9	237	24.7	42	25.6	386	25.4
Threat, Verbal Abuse	17	44.7	112	31.5	329	34.2	57	34.8	515	33.9
Failure to act according to police procedure	19	50.0	121	34.1	358	37.3	61	37.2	559	36.8
Other Misuse of Authority	1	2.6	16	4.5	37	3.9	4	2.4	58	3.8
TOTAL NUMBER OF ALLEGATIONS	38	99.9	355	100.0	961	100.1	164	100.0	1518	99.9
AVERAGE ALLEGATIONS PER COMPLAINT	1.7		1.9		2.1		1.9		2.0	

6. Reviews by the Public Complaints Commissioner

If the complainant is dissatisfied with the decision of the Chief of Police, including a decision that the complaint is frivolous or not within the jurisdiction of the Act, he or she has a right to a review by the Office of the Public Complaints Commissioner.

In 1987, 122 reviews requested by complainants were completed. In 84 cases, the Chief decided there was insufficient evidence for further action; in 19, the police officer had acted according to police procedure, and in 5, there was independent evidence to support the officer's version of events. In 87 cases in which a review was completed, the Commissioner agreed fully or partially with the decision of the Chief. In 12 cases, the Commissioner decided that it was not in the public interest to convene a hearing into the complaint. In 10 cases, the person who had requested a review withdrew the complaint before the review was completed. In 2 cases, the Commissioner arranged an informal resolution of the complaint. The remaining 11 cases resulted in seven Boards of Inquiry being called. (A section on Boards of Inquiry is included at the back of this Report).

7. Length of Time Taken to Resolve Complaints

A record was kept of the time it took to resolve each complaint.

The number of days between the time the complaint was filed and a decision by the Chief of Police averaged 165.3. A representation of the number of days between filing and final investigative report is presented in Table 15.

The number of days between a request for review by the complainant and a decision by the Public Complaints Commissioner averaged 161.4. Table 16 presents the figures for this period.

The Office of the Public Complaints Commissioner is concerned that thorough investigation and appropriate resolution of complaints be accomplished as quickly as possible.

TABLE 15

<u>Number of Days from Filing to Final Report</u>	<u>Number</u>	<u>Percent</u>
1 - 30 Days	89	11.9
31 - 60 Days	108	14.5
61 - 90 Days	118	15.8
91 - 120 Days	116	15.5
121 - 150 Days	84	11.2
151 - 180 Days	46	6.2
181 - 270 Days	88	11.8
271 - 360 Days	23	3.0
Over 360 Days	11	1.5
Not Prepared	9	1.2
Not Specified	<u>55</u>	<u>7.4</u>
TOTAL	747	100.0

TABLE 16

<u>Number of Days from Review Request to P.C.C. Decision</u>	<u>Number</u>	<u>Percent</u>
1 - 30 Days	2	1.6
31 - 60 Days	12	9.8
61 - 90 Days	19	15.6
91 - 120 Days	18	14.8
121 - 150 Days	16	13.1
151 - 180 Days	15	12.3
181 - 270 Days	25	20.5
271 - 360 Days	10	8.2
Over 360 Days	<u>5</u>	<u>4.1</u>
TOTAL	122	100.0

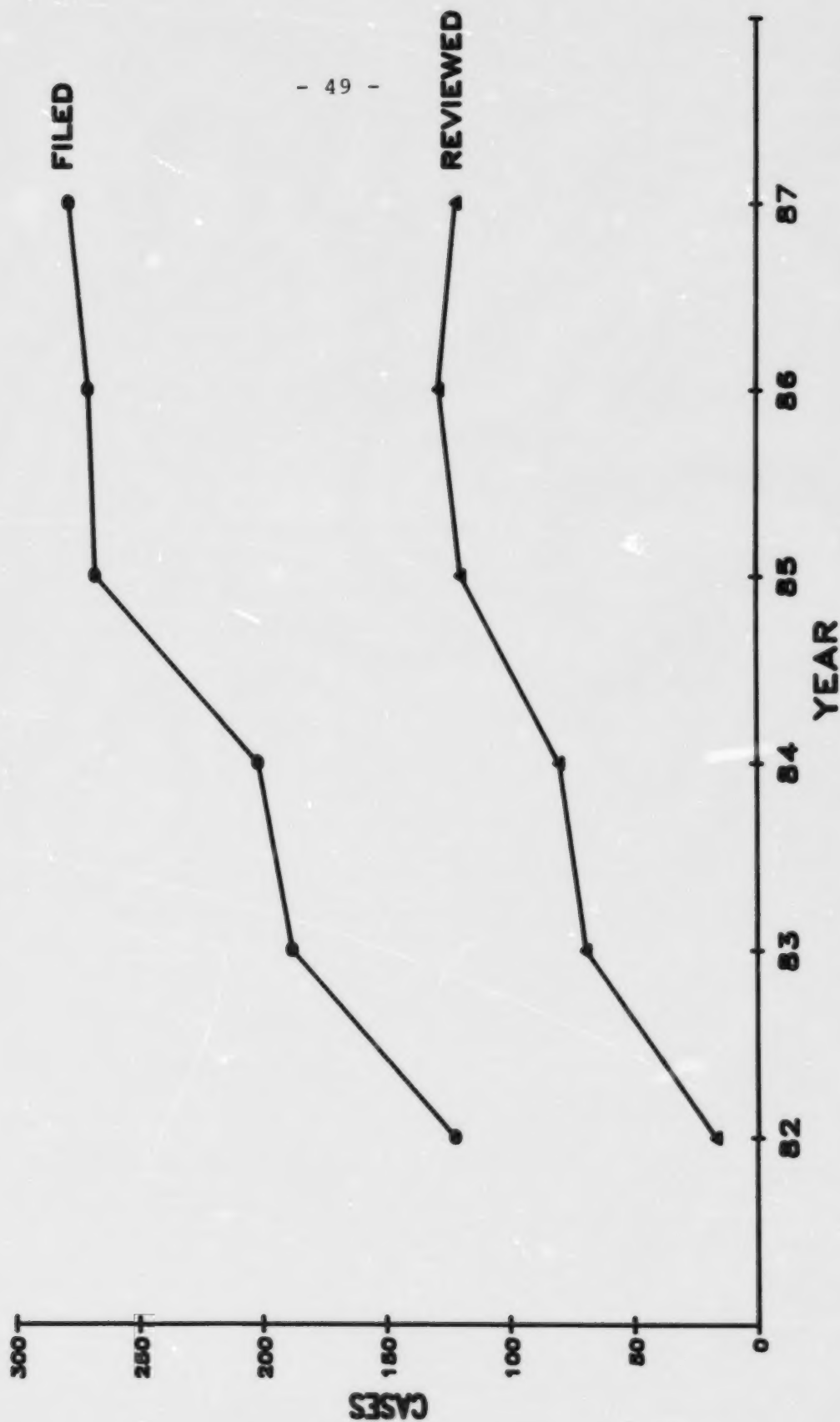
8. P.C.C. Workload

Data have been collected on the operations of the Office of the Public Complaints Commissioner since 1982. There are two major points of contact with the public. The first is upon receipt of the original complaint. The second is the reviewing of the police decision.

The number of complaints filed at the P.C.C. has risen from 122 in 1982 to 279 in 1987. This represents an increase of 128.7%. This increase is presented graphically in Figure 5. Requests for reviews have increased from 17 in 1982 to 122 in 1987.

Public demand for the services of the Office of the Public Complaints Commissioner has increased substantially since its inception.

FIGURE 5
WORKLOAD INDICATORS
PUBLIC COMPLAINTS COMMISSIONER



C. OTHER CONTACTS WITH THE OFFICE OF THE PUBLIC
COMPLAINTS COMMISSIONER

During the 1987 year, in addition to the complaints filed at the Office, there were 529 recorded contacts made with the P.C.C. concerning inquiries which, although they did not develop into complaints, took a substantial amount of time to resolve.

Of these 529 contacts, 82.2% were made by telephone, 11.9% were made by letter, while 5.9% were personal appearances.

Of the 529 people who made inquiries to the Public Complaints Commissioner's Office during this period, 162 or 30.6% were referred by, among others, government agencies, lawyers, or city councillors.

In 55.0% of these contacts, people inquired about specific incidents and wished to know whether or not their complaint fell within the P.C.C.'s jurisdiction. 7.9% of the contacts were requests for information about either the Office or the procedures set out in the legislation.

Another 9.3% made general complaints regarding the police or the justice system; 7.4% requested information about non-police matters while 20.4% requested general information about the police, without having a specific complaint. The majority of these contacts involved some form of follow-up activity; 175 additional telephone calls were made by investigators to aid in the resolution of these inquiries. Further, 117 letters were written for the same purpose and 42 interviews were conducted. In 57 cases, a subsequent follow-up appointment was made.

Aside from these contacts, a great many inquiries were made by people who wanted to lodge a complaint about a police officer on a police force other than the Metropolitan Toronto Police Force. These complaints were not within the P.C.C.'s jurisdiction and were referred to the proper agencies.

People were also referred to the Metropolitan Toronto Police Force, the Law Society, Municipal police authorities, Chiefs of Police in other jurisdictions, the Ministry of the Attorney General, other Ministries and the Ombudsman.

PART III
Other Significant Activities

PART III - OTHER SIGNIFICANT ACTIVITIES

A. EDUCATION AND OUTREACH - POLICE AND PUBLIC

In 1987, the Public Complaints Commissioner continued regular appearances at the C.O. Bick Police College for training sessions on the complaints legislation and its implications both for constables and for supervisory police officers. The Commissioner found these education sessions particularly useful in that they allowed for informal dialogue with members of the police force.

Public education activities and consultations with the public continued throughout the year. As a result of meetings with individuals, community groups, and social service agencies, the Office of the Public Complaints Commissioner undertook to improve public awareness of the Commissioner's role.

B. ON-GOING CONSULTATION WITH THE POLICE FORCE AND THE
BOARD OF COMMISSIONERS OF POLICE

Complaints against the police by the public are of serious concern to police management at all levels. In this regard, the Commissioner and his staff maintain ongoing discussions with the Chief of Police, senior staff of the police force, the head of the Public Complaints Investigation Bureau, and members of the Board of Commissioners of Police.

C. RECOMMENDATIONS TO THE METROPOLITAN TORONTO BOARD OF
COMMISSIONERS OF POLICE

The Metropolitan Toronto Police Force Complaints Act, 1984, gives the Commissioner the power to make formal recommendations directed to the prevention of situations in which complaints arise. Section 21 of the Act provides that the Commissioner may make recommendations to the Metropolitan Toronto Board of Commissioners of Police when the Commissioner is of the opinion that a police practice,

procedure, or law affecting the resolution or prevention of complaints, should be altered or implemented. The Board of Commissioners of Police must respond in writing to such recommendations within 90 days to the Attorney General, the Solicitor General and the Commissioner. The following are examples of recommendations in which a response was received from the Metropolitan Toronto Board of Commissioners of Police in 1987.

1. Remarks Made to Members of the Public by On-Duty Police Officers:

This recommendation was the result of a complaint by a member of the City of Toronto Cycling Committee who alleged that a police officer made a disparaging remark about an alderman. The complainant stated that he was reprimanding a cyclist who had cycled through six red lights. The subject officer intervened in this discussion and the complainant mentioned to the police officer that he was a member of the city Cycling Committee. The complainant alleged that the officer then asked him if he knew a particular alderman. The

complainant responded that he did, and alleged that the officer called the alderman a Communist.

Following a review of the complaint, and a meeting with the alderman, the Public Complaints Commissioner made the following recommendation under section 21(1) of the Metropolitan Toronto Police Force Complaints Act, 1984:

"I recommend that the Board of Commissioners of Police request the Chief of Police to issue a Standing Order reminding all members of the force that while they are in the course of their duty they should avoid making any remarks which could be construed by members of the public as politically partisan, since such remarks can cast the officer's unbiased enforcement of the law into doubt."

The Board of Commissioners of Police responded in February, 1987. They advised the Commissioner that the Chief issued a Routine Order reminding all members to review an existing Standing Order which addresses the propriety of such remarks.

2. Parking Permits For The Handicapped

This case arose out of a complaint from a driver of a vehicle which had been issued a parking permit for the handicapped. The complainant had driven her mother and handicapped sister to an address on Queen's Quay West and parked in a no-parking zone. The permit allows the holder to park in areas designated as "no parking" for up to 24 hours. The vehicle also carried license plates with the 'handicapped' insignia. The vehicle was towed away. The complainant alleged that her vehicle was lawfully parked and should not have been towed.

After conducting a review of the complaint, the Public Complaints Commissioner concluded that the vehicle was lawfully parked and should not have been towed. The Commissioner noted that there appeared to be a misunderstanding on the part of the police as to the exemptions afforded to the holder of a parking permit for the handicapped.

The Public Complaints Commissioner recommended, under section 21(2) of the Metropolitan Toronto Police Force Complaints Act, 1984:

1. "That the Board of Commissioners of Police provide for the inclusion of up-to-date and accurate information concerning the scope of exemptions available to handicapped parking permit holders for use at C.O. Bick Police College.
2. I further recommend that a routine order which accurately reflects the by-laws which govern handicapped parking permits be issued".

As a result of the towing of the complainant's vehicle, she incurred a towing charge of \$67. The Public Complaints Commissioner further recommended that:

3. "The Board of Commissioners of Police authorize compensation to the complainant in the amount of \$67 as a result of the improper towing of her vehicle".

In May, 1987, the Chief responded by stating that the Training Precis was altered to reflect the comments noted in the Commissioner's recommendations. As well, all training sergeants were instructed about the changes to the Training Precis and all members of the Force were informed during regular training sessions.

The Board of Commissioners of Police also authorized reimbursement for the towing charges incurred by the complainant.

3. Dealing with Persons with Physical or Mental Handicaps

These recommendations arose as a result of several complaints which suggested that police officers might benefit from further training in dealing with members of the public who have physical and/or mental handicaps.

Complaints arose from situations involving interaction between the police and members of the public who suffer from handicaps such as: Tourette's Syndrome (unusual behavior and involuntary bad language); diabetes (hypoglycemic reaction); brain damage (resulting in slurred speech and minor coordination problems); or stroke victim (incoherent speech).

The Commissioner noted that a failure to recognize a handicap could, if the officer responded incorrectly, jeopardize a person's life or health.

The Commissioner made the following recommendation under section 21(2) of the Metropolitan Toronto Police Force Complaints Act, 1984:

"That the Board of Commissioners of Police ensure that existing training materials on dealing with the handicapped be revised (or new materials be created):

- To describe behaviour associated with common disabilities or disease conditions, to include information that might assist officers in determining whether an individual is handicapped or suffering from a disease;
- To advise officers on safety conditions in situations in which they cannot be certain of the individual's health status; and
- To instruct officers on what immediate steps to take to ensure that any needed medical care is received."

The Board of Commissioners of Police adopted these recommendations in August, 1987.

4. Notice to Parents of Young Offenders:

This case arose as a result of the arrest on criminal charges of the complainant's 17 year old son. The complainant alleged that the arresting officer did not advise his son of his right to have a parent notified at the time of his arrest, and that the complainant was not notified in writing that his son had been arrested pursuant to the Young Offenders Act. The complainant stated that he did not become aware of the charges until after his son pleaded guilty.

The arresting officer stated that he did not contact the complainant's father because the youth asked that his father not be disturbed given the late hour. The arresting officer partially filled out a form, which set out the parents' address, the criminal charges, and the date he was required to appear in court. This form was eventually returned to the Metropolitan Toronto Police Summons Bureau with a notation indicating that it had not been served.

The Commissioner reviewed the Administrative Procedures established by the Metropolitan Toronto Police Force. They require a police officer who issues an Appearance Notice to a young person to notify the parents of the young person by telephone and invite their attendance at the station for the purpose of serving a Notice to Parent. The Young Offenders Act also requires that notice shall be given in writing to a parent of a young person as soon as possible.

The Public Complaints Commissioner recommended that the Administrative Procedures of the Metropolitan Toronto Police Force be amended to include the following as routine practices:

1. "An attempt to contact the parent of a young person by phone at the time of the young person's arrest regardless of the young person's wishes.
2. The inclusion in the Notice to Parent of the date, signature and the badge number of the officer who released the young person on an Appearance Notice.

3. The setting of the first court date at least six weeks from the date of the young person's release when a parent resides outside of the jurisdiction of Metropolitan Toronto. This should ensure that the young person's parents have been notified prior to the first court date.
4. A routine order be issued reminding police officers of the requirement of the Administrative Procedures insofar as they concern the notification of parents of young persons who have been arrested and/or charged with an offence".

The Board of Commissioners of Police responded in October, 1987. As a result of these recommendations, several sections of the relevant Administrative Procedures dealing with the Young Offenders Act were amended to incorporate the Commissioner's proposals. A Routine Order was also issued, entitled "Notice to Parent," to remind officers of the importance of notifying a parent when a young person is charged and subsequently released.

The Board of Commissioners of Police decided not to implement Recommendation #3 (the setting of the initial court appearance 6 weeks hence) because Crown Attorneys were opposed to this lengthy delay.

5. IMMIGRATION INQUIRIES

The Public Complaints Commissioner responded to a complaint regarding an alleged unnecessary immigration inquiry being made by the police during the course of an investigation. The Commissioner noted a recent decision of a Canadian Human Rights Tribunal which recommended that the R.C.M.P. institute a program to emphasize that inquiries under the Immigration Act cannot be based solely on the person's race, colour or ethnic origin. The Commissioner reviewed the situation and acknowledged the initiatives undertaken by the Metropolitan Toronto Police Force in the areas of human rights law, cross-cultural communication and race relations training. As a contribution to this initiative, the Public Complaints Commissioner recommended, under s. 21(2) of the Metropolitan Toronto Police Force Complaints Act, 1984, that:

"The Force initiate guidelines to assist officers in determining when it is appropriate to ask for the assistance of immigration authorities."

The Metropolitan Toronto Police Force welcomed the recommendation and has initiated discussions with the Office of the Public Complaints Commissioner to implement appropriate procedures to be followed by police officers.

D. PARTICIPATION IN POLICE-COMMUNITY DIALOGUE

Part of the mandate of the Office of the Public Complaints Commissioner is to try to prevent, or prevent the escalation of, situations of misunderstanding or hostility between the police and the community. In furtherance of this objective, P.C.C. staff have helped initiate and have participated in on-going formal police-community dialogue. Some of this dialogue has been on an as needed, short-term basis, at a neighbourhood level. Some dialogue has involved more formal police-community communication throughout the year. The examples below represent involvement by the Office of the Public Complaints Commissioner in issues which affect local neighbourhoods, Metropolitan Toronto, and adjoining regions.

1. Community-Centred Complaint Situations

On occasion, difficulties arise between the police and segments of various communities. Policing a large urban area involves responding to continually changing needs and priorities. Requests for changes in policing services to reflect specific needs are often made by groups with special interests, or residents in a particular neighbourhood, when they feel that officers assigned to their area are not meeting all of their policing needs. Recent examples which have been highlighted in the media include women concerned with incidents of violence specifically directed against women, neighbourhoods concerned about prostitution, and communities concerned about investigative techniques which were perceived as discriminatory against that particular community. If a group is articulate and well-organized, there is usually little difficulty in presenting a case to the police force, and discussions usually achieve acceptable results.

The situation is different when residents of the neighbourhood are not used to making formal approaches to the agencies which affect their lives, or are not cohesive as a group. When residents of an area have low incomes, differ widely in age, or are composed of different racial and ethnic groups which do not understand or accept each other, it is difficult for them to organize and to make the necessary approaches. In these situations, difficulties between police and community can develop into long-standing problems. Typically, there are people who have specific complaints against the police, but may be unwilling to make a formal complaint because they are unfamiliar with or distrust legal systems. There are also individuals who have no specific complaint, but are concerned about police-community relations in the neighbourhood. Often there are extreme differences in opinion as to the quality of police service, the nature of the problem, and what initiatives ought to be undertaken. On a number of occasions, the Office of the Public Complaints Commissioner has attempted to assist in these situations.

It is the firm belief of the Commissioner that, whether or not people are willing to make formal complaints, the existence of situations giving rise to a complaint that are not brought to the attention of the police and the Commissioner is an unhealthy situation. Lack of awareness can lead to a buildup of resentment, hostility, and alienation between the police and a part of the community. Such dissatisfaction can only be alleviated by the establishment of realistic communication between the police and the community concerned.

Establishing the required communication can be difficult. As noted above, the community may be in conflict amongst itself as well as with police and other social services. Further, people are frequently distrustful of government agencies and suspicious of the intentions and degree of commitment of outsiders. Finally, appropriate dialogue between police and community often cannot be achieved without significant organization, hard work and commitment among members of the community. This challenge is particularly difficult to meet when people feel alienated and have little experience in effecting changes to the institutions that affect their lives.

In approaching these situations, the Office of the Public Complaints Commissioner works in cooperation with widely-mandated agencies, such as those of the various cities of Metropolitan Toronto and the provincial government. In addition, the Office tries to establish communication with recognized community leaders who may be interested in effecting changes. These cooperative efforts have usually succeeded in establishing a forum whereby police-community dialogue can take place.

Two situations which arose in 1986 continue to occupy the attention of the Office of the Public Complaints Commissioner.

(a) Birchmount/Finch Community

The issues have been set out in the 1986 Annual Report. The Public Complaints Commissioner's Office has monitored the situation during 1987 and has agreed to be available should the need for assistance arise.

(b) Lawrence Heights

As a result of complaints received in the course of outreach activities in late 1986, the Office of the Public Complaints Commissioner became involved in Lawrence Heights, another small community in the north end of the city. As with the Birchmount/Finch situation, there were allegations of police harassment in the form of unwarranted stops and searches, allegations of racism, and a general concern about relations between the police and youth in the area.

The Commissioner decided that outreach services by the Office in the area would be appropriate. Discussions with local school and community service agencies in the area began in late 1986 and continued throughout 1987. Tensions continued to escalate and the Public Complaints Commissioner attended a public meeting in the neighbourhood to explain the use of the complaints system. The Commissioner believed that it was imperative that the community establish a dialogue with the police in order to address concerns of

both the police and the community. The Public Complaints Commissioner, the Race Relations Director, the Director of the Metropolitan Toronto Multicultural and Race Relations Division, and the Metro Housing Director of Race Relations Policies and Programs met to assist the community in organizing itself. Leaders of the community, the Staff Inspector of the local division, and interested community members were invited to attend meetings with these agencies.

Several meetings were held, beginning in May 1987, during which community members openly discussed their concerns about policing in the area. Some members of the community were concerned that the level of policing in the area was insufficient. Others in the community believed that increased policing would result in a "siege mentality". Members from both these groups attended meetings and discussed their concerns. The Staff Inspector from the local division and several of his staff also attended these meetings and actively participated in the discussions. The police and the community examined the

issue of establishing a "mini-station" in the area and implementing a "Neighbourhood Watch" program. The Staff Inspector assigned a senior officer to act as liaison with the community and to deal directly with any policing concerns that might arise. By the end of 1987, several police community meetings had occurred and the community appeared satisfied with the police response.

A third situation arose in 1987 which involved police response to incidents of violence against women.

(c) Riverdale

In the late spring of 1987, a series of sexual assaults were reported in the Riverdale area. Residents organized the Riverdale Women's Action Committee (R.W.A.C.) and approached the local police division with proposals for enhancing the security of women in the neighbourhood. The Committee was not satisfied with the police response to their requests for information about sexual assaults against women in the area. As a result of one incident in particular, the R.W.A.C. filed a complaint with the Office

of the Public Complaints Commissioner. P.C.C. staff met with members of the R.W.A.C. in order to clarify their concerns about policing. The Office also met with and held extensive discussions with senior officers of the local police division and the Criminal Investigation Bureau. The R.W.A.C. also held meetings with the local police division. As a result of these efforts, the R.W.A.C. and the local police division agreed on a plan which would alert the community when sexual assaults were reported, but which would not jeopardize any police investigation. The Staff Inspector of the district assigned officers to act as liaison with contact persons within the R.W.A.C.

2. Regent Park Advisory Committee on Police/Community Relations

As noted in the 1985 Report, this Committee was formed to address policing concerns in a small but populous area of the city which had been the subject of a report to the Board of Commissioners of Police by this office in 1984. The Advisory Committee, composed of Regent Park residents, professionals working within the community, the police

Division Commander for the area, Community Relations police officers, and a representative of the Metropolitan Toronto Board of Commissioners of Police, continued to function in 1987.

3. Metro Toronto Council on Race Relations and Policing

The Council on Race Relations and Policing is an independent voluntary association concerned with race relations and policing in Metropolitan Toronto. The Council's membership includes members of the Metro Toronto Police Force, municipal government officials, representatives from various federal and provincial institutions concerned with policing, and interested individuals within the community. The Office of the Public Complaints Commissioner has been represented on the Council since 1982, and is an active participant in sub-committee work.

During 1987, the Council completed two projects. The Council, in collaboration with C.O. Bick Police College, produced a videotape to educate the community on the law

relating to the phenomenon of young persons 'hanging out' in public places. The Council also completed a report on the cross-cultural and race relations training done by the Metropolitan Toronto Police Force. The Draft Report on Cross-Cultural and Race Relations Training was forwarded to the Chief of Police who presented it to the Metropolitan Toronto Board of Commissioners of Police. The Office of the Public Complaints Commissioner continues to participate in the Advisory Committee on Police Training which will assist the Force in implementing the goals, objectives, and strategies set out in the Report.

4. The Greater Toronto Region Working Group on
Policing in Multicultural, Multiracial Urban
Communities

The Greater Toronto Region Working Group was formed in 1984 to address policing issues arising out of the increasing plurality of our society. The Working Group is composed of representatives from the police forces of Durham Region, Halton Region, Metropolitan Toronto, Peel Region and

York Region, as well as representatives of various committees and levels of government, and people with expertise in the areas of race and ethnic relations and cross-cultural communication. The purpose of the Working Group is to develop detailed plans of action by police and community to achieve the goals of more representative police forces, enhance cross-cultural training for police officers, improve citizen complaints procedures, and improve and coordinate police community liaison activities. The Office of the Public Complaints Commissioner has been represented among the members of the Working Group since its inception.

During 1987, the Working Group completed a proposal for an "Intercultural Training and Education Project for Police Personnel." This proposal was presented to the Attorney General and the Solicitor General for Ontario as well as the Minister of Citizenship. The Police/Minority Community Liaison Committee continued to meet throughout 1987. Its mandate is to draft a report and guidelines to facilitate police and minority community liaison. The Committee plans to produce the Report and Guidelines in 1988.

PART IV
Boards of Inquiry



PART IV - BOARDS OF INQUIRY

A. INTRODUCTION

Both the Public Complaints Commissioner and the Chief of Police can decide to send a complaint to a Board of Inquiry under the Metropolitan Toronto Police Force Complaints Act, 1984, [s. 19 (3) s. 14 (1)(b)] if they consider that a public hearing is warranted. In addition, any police officer who wishes to appeal from an adverse decision of an internal police disciplinary tribunal arising from a public complaint can appeal to a Board of Inquiry under the complaints legislation.

The individuals who form Boards of Inquiry to hear and decide upon complaints are taken from a panel appointed by the Lieutenant Governor in Council. One-third of the members of this panel are recommended for appointment jointly by the Attorney General and

the Solicitor General; one-third of the members are recommended for appointment by Metro Council and the remaining one-third are recommended jointly by the Metropolitan Toronto Board of Commissioners of Police and the Metropolitan Toronto Police Association. The Attorney General/ Solicitor General appointees must be members of the Law Society of Upper Canada. These lawyers chair each Board hearing.

A Board of Inquiry in respect of an allegation of serious misconduct is heard by three people, one from each group of appointees. A Board of Inquiry involving an allegation of minor misconduct is heard by one person, an appointee of the Solicitor General and Attorney General. The standard of proof in the proceedings for a finding of misconduct is proof beyond a reasonable doubt. Hearings are held in public and are procedurally similar to other administrative or quasi-judicial proceedings. The Statutory Powers Procedure Act and the rules of natural justice apply.

B. BOARD OF INQUIRY DECISIONS, 1987

Between December 21, 1986 and December 20, 1987, seven cases were referred to a Board of Inquiry. Two of the Boards were completed during the year; two were informally resolved; two matters did not proceed because the officers resigned; and in one case the Board had not released its decision by the end of this reporting period.

Eight Board of Inquiry decisions were delivered during the 1987 reporting year. One as a result of a Board called in 1985; five were called in 1986 and two were called and completed in 1987. There were also four appeals from Board decisions and one application for judicial review heard by the Divisional Court of Ontario in 1987.

1. Re Corbett (Officer) and Larner/
Batushin (Complainants)
January 6, 7, 8, 16, 1985;
March 12, 13, 1987
Panel: Sopinka, Santos, Popowich
Hearing ordered by the Commissioner.

The complainants alleged an assault by the subject officer at a downtown apartment and at 52 Division. The complainants testified that they were at a party when police attended in response to a noise complaint filed by a neighbour. The Board heard evidence that the guests at the party were acting in an obnoxious manner and continued to do so when the police arrived. A scuffle ensued and the two complainants were charged with assaulting a police officer. One of the complainants suffered an injury to his forehead and was taken to the hospital.

The Board found the complainants' evidence to be unreliable and insufficient to find, beyond a reasonable doubt, that the officer was guilty of misconduct. The Board accepted the testimony of a neighbour who stated that he saw an officer being assaulted in a hallway near the apartment. The

Board concluded that the officer being assaulted was probably the subject officer. Furthermore, the Board held that the subject officer responded in self-defence and used reasonable force to effect the arrest of the two complainants. The Board categorized both complainants' injuries as minor and completely consistent with what occurred at the apartment and inconsistent with the beatings alleged by them. Both complaints were dismissed.

2. Re: Mills and Stoneman (Officers) and
McMorrow (Complainant)
December 1, 2, 4, 5, 1986;
February 9, 10, 11, 13, 1987
Panel: Ortved, Popowich, McLennon
Hearing ordered by the Commissioner.

The complainant alleged that the police officers used unnecessary violence against him and made an unnecessary arrest. The Board heard evidence that the police officers arrested the complainant after receiving a complaint from a TTC bus driver regarding a disturbance on the bus.

The complainant and his wife had left the bus and were approached by the police as they walked across a parking lot. The police asked the complainant for identification and he gave them a false name. The complainant testified that he had been drinking but was not drunk. The officers testified that the complainant was staggering and needed to be held up by his wife. The officers testified that they arrested the complainant for being drunk in a public place, contrary to the Liquor Licence Act.

The Board found that the police officers erred in believing that the complainant and his wife were the individuals who caused the disturbance on the bus. However, given the inebriated state of the complainant on the night of the incident, the Board found that the officers had sufficient grounds for arrest under the Liquor Licence Act. Accordingly, the allegation of unnecessary arrest was dismissed.

The complainant testified that he was assaulted and injured when he resisted being removed from the police car at 31 Division. P.C. Mills testified that the complainant's injuries resulted from his own "self-abusive behaviour" while being transported to the station. Medical evidence revealed an injury to the complainant's eye, caused by a blow from a blunt object.

The Board found that the complainant's injuries resulted from being kicked by an officer. The Board found the officers guilty of excessive use of force. At the penalty hearing on August 24, 1987, the Board ordered that each officer forfeit three days off. The decision of the Board of Inquiry and the penalty decision are the subject of an appeal by the officers at the Divisional Court of Ontario.

3. Re: Williamson and Bartley (Officers)
and Perdon (Complainant)
March 23, 1987
Panel: Barrett, Rumball, Santos
Hearing ordered by the Commissioner.

The complainant alleged that he was assaulted by two police officers in the parking lot of his apartment building and at the police station. He also alleged that the officers were uncivil towards him and had threatened him at the police station. The complainant was stopped in the parking lot of his apartment building for having previously run a red light. The complainant was unable to locate his driver's licence and said that he believed that P.C. Williamson had given him permission to get it from his apartment. The complainant stated that he was grabbed and assaulted by P.C. Williamson. The complainant also alleged that he was assaulted by P.C. Williamson in the back of the police vehicle and at the police station.

The Board found the complainant's allegations were supported by a witness to the assault in the parking lot. In finding P.C. Williamson guilty of misconduct (unnecessary force and incivility) the Board noted that the officer's general concept of his duties and authority to be "arrogant and misguided". As there was little or no evidence to support allegations of misconduct against P.C. Bartley, the Board dismissed the complaint against him.

A penalty hearing was scheduled for August 20, 1987. P.C. Williamson resigned on August 18, 1987. The Board declined to impose a penalty and ruled that it did not have jurisdiction to impose a penalty on a police officer who had resigned from the Force.

4. Re: Wills (Officer) and Dunlop
(Complainant)
April 7, 1987
Panel: Irish, Crothers, Cole
Hearing ordered by the Commissioner.

The complainant alleged that P.C. Wills requested additional money to be paid in relation to a paid escort duty at a funeral. The officer was charged with engaging in discreditable conduct.

The complainant had arranged for three motorcycle officers to escort a funeral procession from the funeral home to the cemetery. The complainant alleged that P.C. Wills approached him and requested additional money for services rendered. The complainant stated that the officer requested that the money be sent to his station where it would be divided amongst the other officers who worked the assignment.

P.C. Wills pleaded guilty to the allegation. The Board characterized the officer's conduct as "a foolish mistake". In view of the fact that the officer had admitted fault, the Board imposed a reprimand.

5. Re: Lloyd and Findley (Officers) and
Wilmot (Complainant)
February 18, 19 and 20, 1987;
March 20, 1987
Panel: Cronk, Clements, Gilmore
Hearing ordered by the Commissioner.

The complainant alleged that two police officers used unnecessary force when arresting her. The incident arose as a result of a dispute between the complainant and a neighbour. The complainant told the Board that when the police arrived she answered the door with a knife in one hand, because she had been preparing vegetables. She said that, once the police were inside her apartment, she attempted to continue to cut the vegetables and refused to identify herself. The complainant testified that one of the officers drew his gun and pointed it at her. She stated that this action startled her, causing her to throw the knife to the floor. The complainant stated that she was frightened by the officers' actions and fled to the balcony. She stated that she resisted the officers' attempts to arrest her by holding on to the railing on the balcony.

P.C. Lloyd testified that he and his partner, P.C. Finley, were met by the complainant at her apartment door with a knife in her hand. He stated that, as a result of the complainant shouting and pointing the knife, he pulled out his gun. He testified that the complainant repeatedly refused to identify herself and ran out to the balcony. The police managed to get the complainant back into the apartment and handcuffed her. The complainant was charged with mischief and assault.

The Board stated that it had "considerable difficulty in accepting in full the evidence" of the subject officers. However, it was unable to conclude, beyond a reasonable doubt, that the events transpired as the complainant alleged. The Board accepted that the complainant acted out and behaved irrationally. The Board attributed the officers' actions as a response to the complainant's "clearly erratic and agitated behaviour" and was unable to determine that the officers' conduct was unnecessary. The Board found that there was insufficient evidence to make a finding of misconduct against the subject officers.

The complainant's son was arrested because the officers believed he was interfering with their investigation of his mother. The complainant alleged that this arrest was unnecessary. The Board heard evidence from the subject officers that the arrest took place on the balcony. P.C. Finley testified that he warned the complainant's son three times to stop interfering with the officers. The complainant's son testified he was arrested in the hallway. The Board concluded that if the arrest took place on the balcony when he was interfering with the officers' handling of his mother, the arrest was necessary. The Board found insufficient evidence to support a finding of misconduct on the allegation of unnecessary arrest of the complainant's son. The complaints were dismissed.

6. Re: Lorbetskie and Gordon (Officers)
and Dempsey (Complainant)
June 3, 4, 1987
Panel: Jones, Popowich, McLennon
Hearing ordered by the Commissioner.

The complainant alleged that he was assaulted by two officers in the parking lot of 52 Division following his arrest for causing a disturbance. The complainant testified that the officers struck him about a dozen times with closed fists. The complainant alleged that his injuries included a broken front crown, chipped molar, and bruised ribs.

The subject officers denied assaulting the complainant. They testified that he slipped in the snow and fell on a fender of a parked police car, breaking the vehicle's aerial. A damage report was submitted by the subject officers to confirm the breakage of the vehicle's aerial. The subject officers' version of the incident was corroborated by a sergeant at the police station. He told the Board that, when the complainant was asked about the cut on his lip, he said that it was caused by a fall outside the building. This witness testified that the complainant did not complain to him about an assault.

The Board determined that the medical and dental evidence presented did not substantiate the complainant's allegation. The absence of independent evidence in support of the complainant, combined with the evidence of the subject officers and two other police officers, did not establish, beyond a reasonable doubt, that the officers were guilty of misconduct. The complaint was dismissed.

7. Re: Sansom (Officer) and Mitri
(Complainant)
July 17, 1987 Panel: Cronk
Hearing ordered by the Commissioner.

The complainant alleged that P.C. Sansom was uncivil towards him during a routine identification check. The complainant testified that he was in the process of installing a car stereo in his friend's vehicle, when approached by two officers. During this encounter, the complainant testified that the subject officer accused him of stealing car stereos, and swore at him on three different occasions. The allegations of incivility with respect to the swearing formed the basis of the complaint before the Board.

The Board heard evidence from the complainant, the subject officer, his partner, and a civilian witness who was helping the complainant install the car stereo. The Board questioned the reliability and independence of the witness police officer's observation of the events, and noted that neither officer had made entries in their notebooks concerning the incident.

Conversely, the Board found the complainant's recollection of the incident to be reliable. He filed the complaint within a matter of hours of the alleged misconduct and the civilian witness's testimony corroborated the complainant's allegation on the issue of swearing. Accordingly, the Board found that there was evidence, beyond a reasonable doubt, that the subject officer did swear at the complainant on at least one occasion. At a penalty hearing on September 21, 1987, the Board reprimanded P.C. Sansom.

8. Re: Matthews (Officer) and Lorimer
(Complainant) July 29, 1987
Panel: Hatton
Hearing ordered by the Commissioner.

The complainant alleged that P.C. Matthews was uncivil to him after stopping him for a traffic violation. The complainant testified that he was travelling southbound on Highway 404. Upon reaching Highway 7, and while attempting to negotiate a right turn, the complainant stated that an off-duty officer pulled his vehicle in front of him at an angle, thereby blocking his way. The complainant testified that P.C. Matthews swore at him, alleging that the complainant forced him onto the shoulder of Highway 404 during a lane change.

P.C. Matthews denied swearing at the complainant. He testified that he stopped the complainant because he observed him driving in an erratic manner. He stated that the complainant forced his vehicle and another car onto the shoulder of the highway while making lane changes. He also stated that the complainant was driving at a high rate of speed.

The Board heard evidence that P.C. Matthews took the complainant's licence number, and issued him a summons for careless driving later that evening.

The Board found that P.C. Matthews was a credible witness, that his evidence was straightforward, and that his version of the events seemed entirely probable and reasonable. Conversely, the Board found that the complainant's testimony was troubling. The Board stated that the complainant's driving behaviour, as described by him was perplexing. As well, his version of what transpired at the intersection after being stopped was somewhat improbable. Other troubling aspects of the complainant's version of the events included his behaviour when the subject officer delivered the summons, and the fact that the complainant waited a few days before laying a complaint against the officer. The Board stated that in assessing the evidence against the subject officer, the allegation of misconduct was not proven beyond a reasonable doubt. The complaint was dismissed.

Full texts of the Board of Inquiry decisions are available on request.

DIVISIONAL COURT APPEALS

Decisions of Divisional Court:

1. Re: Hendry and P.C. Giancola

On March 24, 1987, the Divisional Court (Holland, White and Bowlby, JJ.) allowed an appeal by P.C. Frank Giancola in the matter of a complaint by James Hendry. (See Reasons for Decision in Appendix A).

2. Re: Smith and Murdock

In an oral decision delivered on June 26, 1987, the Divisional Court (O'Leary, Eberle, and Rosenberg, JJ.) allowed an appeal by Constable Robert Murdock in the matter of a complaint by Robert Smith. (See Reasons for Decision in Appendix B).

3. Re: Neely and P.C. Weller

The Divisional Court (O'Leary, Eberle and Rosenberg, JJ.) upheld the decision of the Board of Inquiry and the penalty imposed by it, in the matter of a complaint by Robert Neely.

The Court found that the Metropolitan Toronto Police Force Complaints Act, 1984 did not violate the Canadian Charter of Rights and Freedoms. (See Reasons for Decision in Appendix C).

An application for leave to appeal to the Ontario Court of Appeal by Officer Weller was dismissed on January 11, 1988.

4. Re: Sausik and P.C. Clarke

The Divisional Court on September 27, 1987 (Holland, J.) allowed an appeal on consent setting aside the finding of misconduct and the penalty decision by the Board of Inquiry. (See Appendix D).

JUDICIAL REVIEW

5. Re: Marks v. Lewis and Wilcox

The Divisional Court on December 1, 1987, (Callaghan, Saunders, Trainor, JJ.) dismissed an application for judicial review seeking to prohibit the Public Complaints Commissioner from reviewing the decision of the Chief of Police. (See Appendix E).

APPENDICES



APPENDIX A

SUPREME COURT OF ONTARIO

DIVISIONAL COURT

J. Holland, White and Bowlby JJ.

Police Constable Frank Giancola (Appellant) -and- Metropolitan
Toronto Police Complaints Board and James Charles Hendrey
(Respondents)

Disposition:

This appeal is allowed, the judgment below is set aside
and the complaint of misconduct is dismissed.

Brief Reasons:

The evidence of identification of Constable Giancola as
the constable who assaulted Mr. Hendrey was unsatisfactory in the
extreme. Mindful as we are of the limitations on a Court of
Appeal in dealing with factual findings made by a trial tribunal,
and, as well, our jurisdiction on appeal under this statute, we
feel we must interfere with the Board's decision.

Lord Hewart stated in R. v. Wallace (1931) 23 Cr.App.R.
32 at 35 (quoted with approval by Mackay J.A. (Ontario C.A.) in
Regina v. Smith (1952), 103 C.C.C. 58) "We have come to the
conclusion that the case against the appellant was not proved
with that certainty which is necessary to justify a verdict of
guilty."

Although the case before us is a civil one, having
regard to the wording of the relevant statute, the standard of
proof in a criminal charge--proof beyond a reasonable doubt--is
the appropriate one.

We regard a conviction founded on the evidence relied upon as identification of Constable Giancola as Mr. Hendrey's assaulter to fit within the concept of a conviction founded on error of law.

Accordingly, the judgment appealed from is set aside and the complaint of misconduct is dismissed.

Hendrey J.
Wm White J.

SUPREME COURT OF ONTARIO
(Toronto Divisional Court)

O'LEARY, EBERLE and ROSENBERG JJ.

B E T W E E N :

ROBERT SMITH

Complainant
(Respondent)

- and -

P. C. ROBERT MURDOCK

Officer
Concerned
(Appellant)

)
)
) J. A. Olah and
) G. T. Trotter
) for R. Neely

) R. Weinberger
) for R. Smith

)
) J. C. Pearson and
) L. Ceccheto
) for the Attorney
) General of Ontario

) R. P. Armstrong Q.C.
) and J. B. Laskin
) for the Appellant

)
)
)
) Heard: June 25, 1987

ROSENBERG J.: (ORALLY)

On this appeal there is no need to consider the Charter arguments. The complaint that formed the basis for proceedings against the appellant alleged that early in the morning of January 26, 1984, the respondent was assaulted by the police when he was arrested for impaired driving and refused to provide a breath sample.

The complaint specified that after the respondent refused to blow into the breath machine as requested, one police officer had him down on the floor and the second officer kicked him in the ribs.

The respondent testified he was taken directly to the breathalyser room where the appellant and the breathalyser officer asked him to blow into the breathalyser. He blew into the machine. The green light came on. He was asked to blow again. When he refused to do so, the appellant punched him on the right side of the forehead and he fell to the floor. While he was lying on the floor, he testified, the appellant kicked him three or four times or more on the left side.

The appellant denied that he either was present in the room or assaulted the respondent when the respondent refused to take the breath test. The appellant did acknowledge that he had physically restrained the respondent from leaving the interview room to which the respondent was brought following his refusal to take the breath test.

In response to the respondent's attempt to kick or knee him in the groin, the appellant testified he had grabbed the respondent and spun him back into his chair. P.C. Daniel Luff, who was present in the

interview room with the appellant and the respondent testified that he was standing in the room talking on the telephone. He testified the appellant grabbed the respondent from behind and pushed or rotated him back into his chair with a degree of force.

Two orthopaedic surgeons, Dr. Hamilton Hall and Dr. Evans, gave expert evidence at the hearing. Both considered it unlikely that the respondent's injuries could have been caused as the respondent testified they had been, by a punch in the head or by kicks to the ribs while the respondent was lying on the floor. Dr. Evans' evidence was that injuries such as those suffered by the respondent could have resulted from being pushed or rotated back into a chair in the manner described in the hypothetical put to him, which generally conformed with the account of the incident given by the appellant and by P.C. Luff.

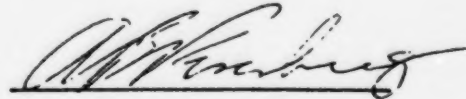
The board rejected the respondent's evidence as to how and where his injuries occurred. The board found that the respondent had a very hazy recollection of what transpired, and, more importantly, where it transpired. The board accepted the appellant's evidence that he had grabbed the respondent after the respondent left his chair in the interview room and had thrown him back into his chair. It also expressly had found that

the appellant had no intention of causing the respondent serious injury. The board concluded that the force used by the appellant was excessive. It was on that ground rather than on the ground specified in the complaint that the board found the appellant had acted in a manner constituting misconduct.

In the result, the board found the appellant's misconduct to be different than that in the complaint and in the respondent's evidence. They found it to have occurred in a different room and to be unintentional rather than deliberate. The evidence of this alleged offence came not from the complainant, but from the evidence called by the appellant in his defence. The purpose of a hearing under the legislation, as the notice of the hearing itself sets out, is to determine whether the officer against whom allegations of misconduct have been made, is guilty beyond a reasonable doubt of the particular misconduct alleged.

The board erred in finding the appellant guilty of misconduct other than that alleged in the complaint in the notice of hearing. The appeal is

allowed and the order of the board is quashed, and in its place there will be a finding that P.C. Murdock is not guilty of the misconduct in the complaint.

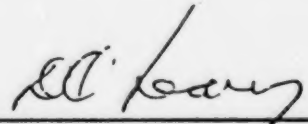


Rosenberg J.

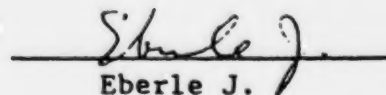
O'LEARY J.: (ORALLY)

For the reasons given by Rosenberg J. on behalf of the three of us, the appeal is allowed, the decision of the board that the complaints against the appellant had been substantiated is set aside, and in its place is substituted the finding that the complaint is not proven. No order as to costs.

RELEASED: SEP 14 1987



O'Leary J.



Eberle J.



APPENDIX C

RE: METROPOLITAN TORONTO POLICE COMPLAINTS BOARD
and ROBERT NEELY
- and -
TERRENCE WELLER

BY THE COURT:

This is an appeal by Police Constable Terrence Weller from the decision of and the penalty imposed by the Police Complaints Board. We deal with the arguments of the appellant as follows:

1. That the Metropolitan Police Force Complaints Project Act 1981 (hereinafter the 1981 Act), and the Metropolitan Toronto Police Force Complaints Act, 1984, (hereinafter the 1984 Act) infringe the right to trial by an independent and impartial tribunal, guaranteed by s.11(d) and s.7 of the Canadian Charter of Rights and Freedoms.

So far as s.11(d) is concerned, the case of Re Trumbley et al. (1986), 55 O.R. (2d) 570, a decision of the Court of Appeal, establishes that a police officer charged with an offence against discipline under the Police Act is not charged with an offence within the meaning of s.11 of the Charter and that s.11(d) does not apply to a trial on such a charge. In our view, an allegation of misconduct against a police officer under either the 1981 Act or the 1984 Act is analogous to a charge of misconduct made against a police officer under the Police Act, in that if the officer is found guilty of the allegation, he is subject only to discipline in regard to his employment but not to any penal consequences such as fine or imprisonment. Accordingly, we hold that the complaint of misconduct made against the appellant is not an offence within s.11 of the Charter and s.11(d) has no application to this case.

The argument of the appellant in regard to s.7 of the Charter is that the complaint of misconduct against him and the subsequent public trial thereon, involved the security of his person in that it exposed him to anxiety and other vicissitudes related to a possible loss of his good name, and that there is a reasonable apprehension of bias on the part of the Board that tried him in that it was chosen by the Public Complaints Commissioner who also has some responsibility with regard to investigating the complaint made against him.

Assuming without deciding that the complaint and subsequent trial threatened the security of the person of the appellant so as to invoke s.7 of the Charter, we are of the view that neither the Acts, nor the manner in which the Board which tried him was chosen, raise any apprehension that that Board may have been biased against him.

While as stated, the Public Complaints Commissioner has some responsibility to investigate the complaint against the appellant, his obligation is to use his authority in the public interest and to investigate in an effort to discover the truth whether such be favourable or unfavourable to the appellant. Further, the Public Complaints Commissioner is not the prosecutor

nor does he have carriage of the complaint against the appellant. Counsel who is to present the complaint to the Board must be appointed by the Board, not by the Commissioner.

Most importantly, of those who were eligible to be selected by the Commissioner as the Board to try the complaint, one-third had been jointly recommended to the Solicitor-General by the Metropolitan Board of Commissioners of Police and The Metropolitan Toronto Police Association; one-third had been recommended by The Municipality of Metropolitan Toronto; and one third had to have training in law. The Commissioner, in selecting the members of the Board to hear the complaint, must select as chairman, one trained in law and in regard to the other two Board members, where possible, one who was recommended jointly by the Metropolitan Board of Commissioners of Police and the Metropolitan Toronto Police Association, and one recommended by the council of the Municipality of Metropolitan Toronto.

In our view, the Legislature has in this way provided for a three-panel board that is prima facie impartial. The mere fact that the Commissioner can determine which individuals from these three groups of impartial persons shall comprise any given Board does not give rise to apprehension that the Board so constituted may be biased against the police officer. In fact the Commissioner in this case chose as the Board those whose turn it was to sit. The lists are maintained on the basis that the name of one who has just sat on a Board is placed at the bottom of the list.

There is then no apprehension of bias on the part of the Board that tried the appellant.

2. The appellant Weller further argues that the 1981 and the 1984 Acts infringe the equality rights guaranteed by s.15(1) of the Charter in that those Acts apply only to members of the Metropolitan Toronto Police Force, while, in the rest of the Province, police officers are subject only to the Police Act. In fact the Police Act applies also in Metropolitan Toronto, but it is clear that the 1981 and 1984 Acts do not apply outside Metropolitan Toronto.

The appellant focuses his complaints of unequal treatment on three principal aspects of the legislation.

The first relates to rights of appeal. Although under the Police Act, there is no right of appeal to any court, there are several levels of appeal including an appeal to the Ontario Police Commission. These may be characterized as lying generally within the framework of police administration. Under the 1981 and the 1984 Acts, after a hearing by an independent complaints board, there is an appeal to the Divisional Court, although not on questions of fact alone.

In the second place, the appellant complains that in the 1981 and 1984 Acts, the Public Complaints Commissioner is given investigative powers which include certain powers of search and

seizure, and the power to subpoena evidence. Under the Police Act, the usual investigative powers of police officers are applicable.

Thirdly, in Metro, members of the public may directly initiate a complaint against a police officer, whereas under the Police Act, a complaint may be formally initiated only by a member of a police force.

Before proceeding further, reference should be made to several of the recent cases dealing with equality rights. In Andrews v. Law Society of British Columbia, [1986] 4 W.W.R. 242 at p.249, the court said: "It cannot have been the intention of parliament to guarantee a general right against unequal treatment. Almost all statutes draw distinctions between individuals. It cannot be supposed that in all such cases, the individual's constitutional rights are infringed".

Then, in Century 21 Ramos Realty v. The Queen (Ontario Court of Appeal, February 27, 1987 unreported) at p.36 of the transcript reasons, the court adopted the pejorative view of the words "without discrimination" in s.15 and quoted with approval from R. v. LeGallant (1987), 54 C.R. 3rd 46 at 55 as follows:

The question to be answered in determining whether or not law is discriminatory is whether the law is reasonable or fair, having regard to its purpose and effect. Involved in this approach, there is the consideration that a law may be discriminatory if it treats some person unduly prejudicially.

It would appear to follow that differences, distinctions or even disadvantages which are trivial are not entitled to constitutional protection under s.15.

Finally in The Queen v. Ertel (Ontario Court of Appeal, June 3, 1987 unreported), the court followed and applied Ramos. The case is interesting because there, following a preliminary hearing at which the accused had been discharged, he was sent to trial by a direct indictment. The statutory provision for direct indictments dispensed with a preliminary hearing. It was held that any disadvantage prima facie resulting from the statutory provision disappeared because the accused had in fact had a preliminary hearing.

Thus, in judging the effect of a statutory difference, it is important not to view the matter in a vacuum, but to pay due regard to the facts of the case.

Returning to the specific complaints made in the present matter, we are unable to conclude that, with respect to the rights of appeal, there is any significant disadvantage under the Metro Acts.

So far as the Public Complaints Commissioner's broader rights of investigation are concerned, there is no suggestion in the present case that those broader rights were exercised or that they played any part in the case against the appellant. Even if they had, it is not shown that those investigatory rights infringe any rights of the officer himself. For example, he is not made a compellable witness in any way. To set aside the tribunal's decision on the basis of a statutory power which has played no part in the case would disregard the actual circumstances of the case. In any event, a broader investigative power, which raises the possibility that more evidence might be discovered than by an investigation under the Police Act, may work as well to the advantage of the police officer as to his disadvantage, for it may disclose evidence favourable to him as well as evidence against him. As already noted, the Public Complaints Commissioner's investigative powers are, by the statute, to be exercised in the public interest.

Finally, turning to the broader scope of complaints that may be made under the 1981 and the 1984 Acts, i.e., that complaints may be made directly by members of the public, we are unable to see that this results in any disadvantage to Metropolitan police officers. It is said that these complaints make the proceedings adversarial, but undoubtedly under the Police Act any proceeding by way of complaint against a police officer are also adversarial. It is to be noted that the Statutory Powers Procedure Act applies to proceedings under both statutes.

Accordingly and without going further, we conclude that none of the principal complaints made by the appellant about unequal treatment under s.15(1) are well founded.

However the argument ranged further. The respondents relied strongly on other elements of the Metropolitan legislation which they say give the Metro police their own charter of rights as compared to the procedures available under the Police Act with respect to complaints. If it is proper to look at the overall effect of the legislation, and to set off the advantages gained from it by Metro police officers against whatever disadvantages to the officers may be contained therein, we conclude that the overall effect of the legislation causes no prejudice to the Metropolitan Police and certainly none that can be viewed as undue.

The evidence is clear that the Metropolitan Police Association supported the new legislation in briefs submitted to the Legislature, both as to the new rights it gave to police officers, such as more independent investigation and adjudication of complaints, and better procedural protections, as well as the other changes, some of which are attacked in this case. That is, on balance, and taking an overall view of the legislation, the Metropolitan Police Association supported it. While that does not bind the court's hands, it is a helpful guide to how the legislation was viewed in totality before anyone's ox had been gored.

Finally, regard must be had to the abundant uncontradicted evidence that the Acts were a legislative attempt to resolve special problems that had arisen in Metropolitan Toronto, stemming from its well-known cultural mosaic, and leading to difficulties peculiar to Metropolitan Toronto in the relations between a number of the ethnic groups in it and the Metro Police. The legislative reaction is neither harsh, unreasonable, unwarranted nor irrational, but appears to be measured and reasonable and to have valid legislative objectives.

The submission under s.15 of the Charter must be rejected.

3. The last point raised by the appellant related to the penalty meted out by the tribunal, which ordered that, if he did not resign within seven days, he be dismissed. In doing so, the tribunal considered the exemplary record of the appellant and then stated:

Balanced against this exemplary record of service to the force, we weigh the findings made by us with respect to this most serious and unprovoked assault on the complainant. We find the following circumstances surrounding the assault are relevant in the matter of determining penalty:

1. The complainant was under arrest at the time.
2. The assault took place behind closed doors.
3. There were two officers in the room with the complainant at the time.
4. The complainant's only provocative behaviour was to refuse to give his name when asked, and to swear at the officers in so doing.
5. P.C. Weller was about 5 inches taller and about 60 pounds heavier than the complainant.
6. The assault consisted of much more than a simple impulsive blow. The hard knee in the groin came first, followed by two punches in the abdominal area. Next came a twisting throw to the floor; and to finish up, a boot to the ribs.
7. The damage sustained by the complainant was serious and painful, and is in part permanent. He suffered three operations and wore a full leg cast for approximately six months. He has permanent damage to a testicle. He has suffered from ongoing depression which should continue for quite some time.

All of these considerations were relevant to the penalty to be imposed. However, the tribunal went on to state:

We have also found that P.C. Weller colluded with his partner in the writing of his notes to cover up his involvement in the assault, and that he gave false evidence at the Hearing into the allegations.

At the Penalty Hearing the officer, through his counsel, took the position that he did not accept the Board's findings of misconduct, and that he would go to his dying day protesting his innocence. Presumably that means that even if the appeal which he has launched against the finding of misconduct is unsuccessful, he will continue to insist upon his innocence.

We are very concerned about the effect of this attitude on P.C. Weller's ability to continue to serve the public as a police officer. We were considering imposing the penalty of a reduction in rank of this officer, given the severity and nature of the assault, weighed against his prior good record, but we believe this might only exacerbate his now-public posture of being totally innocent and unfairly dealt with. There is no suggestion of remorse, nor any explanation for the severity of the assault or the reasons for it.

Accordingly, the only penalty we think would properly serve the public interest is to direct that the officer resign from the Metropolitan Police Force, and in default of resigning within seven days, be summarily dismissed.
[Emphasis added.]

It is questionable whether considerations, such as collusion, false testimony or lack of remorse, are appropriate for the purpose of increasing the penalty that would otherwise have been found to be proper. However, we are of the opinion that, even disregarding these elements, when we consider the extent to which the special trust placed in police officers was abused by this unprovoked assault, together with the serious and permanent injuries which resulted from it, and in spite of the officer's prior good record and strong possibility of rehabilitation, the penalty imposed was the proper one.

In the result, the appeal is dismissed. We are not inclined to make any order as to costs, but if any counsel desire otherwise, arrangements may be made for submissions.

Released: September 29, 1987

Dennis F O'Leary
Shule Jr
W. R. R. R. R. R.

APPENDIX D

IN THE SUPREME COURT OF ONTARIO
DIVISIONAL COURT

NO.

THE HONOURABLE MR. JUSTICE

J. Holland

) *Thurs* DAY, THE *26th* DAY OF
) *August*, 1987 A.D.
)

B E T W E E N:

ATTORNEY GENERAL FOR THE PROVINCE OF ONTARIO,
Respondent,

- and -

JOHN CLARK,
Appellant.

O R D E R

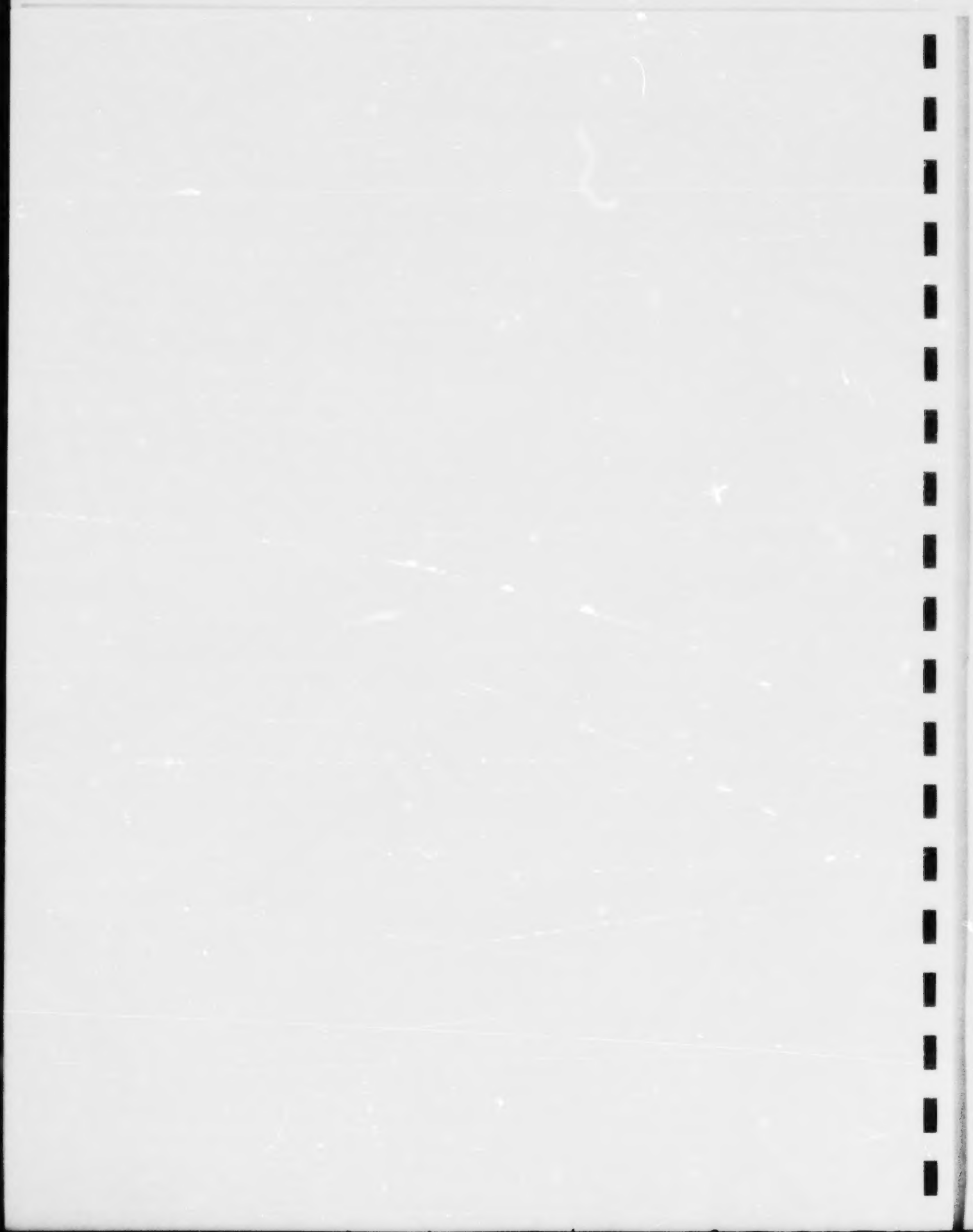
THIS MOTION made by the Appellant for an order allowing the appeal, heard in Chambers at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING THE NOTICE OF APPEAL dated April 29, 1987, and the Consent of the Respondent to the Appeal dated August 25, 1987, no-one appearing for either Respondent or Appellant, although properly served as appears from admissions of service on both documents,

1. THIS COURT ORDERS THAT the Appeal be allowed and the decision of the Board of Inquiry dated March 24, 1986, whereby the Appellant was found guilty of a misconduct further to the Metropolitan Toronto Police Force Complaints Act (1984) be set aside and a dismissal of the allegation of misconduct be substituted therefore.
2. THIS COURT ORDERS THAT the Appeal be allowed and that the decision of the Board of Inquiry dated June 12, 1986, whereby the Board adjourned the penalty proceedings sine die purportedly pursuant to the Metropolitan Toronto Police Force Complaints Act, 1984 be set aside as being made without jurisdiction.

cjm
RDC

*with admission
Holland
Aug 27/87*



APPENDIX E

TUESDAY, DECEMBER 1, 1987

Before the Associate Chief Justice of the High Court
(Callaghan)
The Hon. Mr. Justice Saunders and
The Hon. Mr. Justice Trainor

JUDICIAL REVIEW

Applicant

R.M. Parker, Q.C.

Respondent

D.W. Brown, Q.C.

10:35 a.m. R.M. Parker presented his argument.

11:27 a.m. Court recessed.

11:54 a.m. Court resumed.

Judgement: This Application is dismissed

The applicant seeks prohibition on the grounds that the Public Complaints Commissioner has no jurisdiction to proceed herein because there in fact is no "complaint" within the meaning of section 1(e) of the Complaints Project Act, 1981 (Act).

We are of the view that having regard to the allegation made by Mr. Wilcox, the conduct in issue may well fall within the definition of "discreditable conduct" as set forth in section 1(a)(i) of the Code of Offences under the Police Act. (O.Reg. 790)

This allegation in our view clearly gives the Commissioner jurisdiction to review the decision of the Chief of Police under section 13(4) of the Act.

No order as to costs.

Divisional Court, Court Room #3, Osgoode Hall

Marks, J. Chief of the Metropolitan Toronto Police Force -and-
Lewis, C.E., Q.C., Public Complaints Commissioner & others.

483/87

Divine Light
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order of all

Before the American and British plenipotentiaries met at London. Mr. Justice was one of the plenipotentiaries of the American Government.

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J. M. Parker 25		J. M. Parker 25

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Journals &
Complaints Commissioner
& others

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allotment made by Mr. Mease, the conduct of an action may not
fall within the operation of "statute of limitation" as set forth
in section 1(a) (1) of the code of offences under the Public Act,
(C. 89-290)

! This objection to our answer clearly shows the
Commissioner's misdirection in making the question of the
of 1900 stand as a 1914 of the fact
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(1) Economy & P.
and others

Applicant Judicial Review Respondent

The Board of Commissioners
of Public Works City of
Baltimore & other

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31 A. Cogam presented his argument.

15003/87

255 D.W. Brown presented his argument
257 C.D. McGinnis replied.
258 Court recessed. 339 Court resumed.

318. Court reversed. 339. Court reversed.
judgment to be given in the 10th division or main motion.

Judgment to be given in Ciof's absence or men motion
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Sunday Oct. 11th 9 AM - Canyon de Chelly Natl Monument

Bill 4

An Act to amend the Metropolitan Toronto Police Force Complaints Act, 1984

The Hon. I. Scott
Attorney General

1st Reading November 4th, 1987
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The purpose of the Bill is to permit the extension of the police complaints procedure to municipalities other than Metropolitan Toronto on the request of the municipality.

SECTIONS 1 and 2. The amendments to the definitions adjust the terminology so that it is not confined to Metropolitan Toronto but can apply to any municipality to which the Act applies. The Commissioner's title is changed from "Public Complaints Commissioner" to "Police Complaints Commissioner".

SECTION 3. The new section authorizes municipalities to adopt by-laws requesting the Lieutenant Governor in Council to designate them by regulation (under clause 31 (ca) of the Act, as enacted by section 16 of the Bill). A regulation may only be made where such a by-law is passed.

SECTIONS 4 to 7. The amendments make no change in substance except to refer to all designated municipalities.

SECTION 8. Under existing section 11 of the Act the report of the Bureau's investigation is given to certain persons. The amendment would provide that the result of a further investigation by the chief of police on the request of the Commissioner be given to the same persons.

SECTION 9. Existing section 14 authorizes the chief of police to delegate to an officer of the rank of inspector or higher. The amendment permits the delegation to be to a senior officer where the police force does not have the rank of inspector.

SECTION 10. The amendment removes any doubt that the appeal from the decision of a chief of police on a disciplinary hearing is to be taken under the *Metropolitan Toronto Police Force Complaints Act, 1984* and not the *Police Act*.

SECTIONS 11 to 15. See explanatory note for sections 4 to 7 (except for subsection 13 (1)).

Clause 23 (2) (b) of the Act makes the Attorney General a party to hearings before a board of inquiry, except when the hearing is in respect of a penalty imposed on an officer. The amendment in subsection 13 (1) ensures that the Attorney General is not excluded from participating where the officer's hearing is combined with the complainant's hearing.

SECTION 16. The amendment authorizes a municipality to be designated by regulation where it has passed a by-law requesting the designation.

SECTION 17. The short title of the Act is amended to remove specific reference to the Metropolitan Police Force.

Bill 4

1987

**An Act to amend the Metropolitan Toronto
Police Force Complaints Act, 1984**

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of the Province of Ontario, enacts as
follows:

**1.—(1) Clauses 1 (a) and (b) of the *Metropolitan Toronto
Police Force Complaints Act, 1984*, being chapter 63, are
repealed and the following substituted therefor:**

(a) "Bureau" means a Public Complaints Investigation
Bureau established under section 5.

(2) Clause 1 (c) of the said Act is amended by striking out
"Public" in the first line and inserting in lieu thereof
"Police".

(3) Section 1 of the said Act is amended by adding thereto
the following clause:

(ca) "designated municipality" means The Municipality
of Metropolitan Toronto and the municipalities that
are designated by a regulation made under clause
31 (ca).

(4) Clause 1 (l) of the said Act is repealed and the following
substituted therefor:

(i) "police association" means the association as
defined in the *Police Act* for the police force of a
designated municipality. R.S.O. 1980,
c. 381

(5) Section 1 of the said Act is further amended by adding
thereto the following subsection:

(2) A reference in this Act to a police officer, chief of
police, police force, Bureau, board of inquiry or panel for
boards of inquiry means the one appointed or established for
the designated municipality that the subject officer serves. References to
local bodies

2

Bill 4 METRO. TORONTO POLICE FORCE COMPLAINTS 1987

2. Section 2 of the said Act is amended by striking out "Metropolitan Police Force" in the third line and inserting in lieu thereof "police force of a designated municipality".

3. The said Act is amended by adding thereto the following section:

By-laws to request application of Act R.S.O. 1980, c. 381

2a.—(1) The council of a municipality that maintains a police force other than by agreement under section 64 of the *Police Act* may, by by-law, request the Lieutenant Governor in Council to designate the municipality as one to which this Act applies.

Idem

(2) The council of a municipality that maintains a police force by agreement under section 63 of the *Police Act* may pass a by-law under subsection (1) only if the municipality providing the services is a designated municipality.

4.—(1) Subsection 3 (1) of the said Act is amended by striking out "Public" in the second line and inserting in lieu thereof "Police".

(2) Section 3 of the said Act is amended by adding thereto the following subsections:

Local offices

(6a) The Commissioner shall establish a local office in each designated municipality.

Communication to Commissioner by local office

(6b) Any matter or thing that is required or permitted by this Act to be given to or served upon the Commissioner shall be given or served at the local office of the Commissioner.

5. Section 4 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 31, section 1, is repealed and the following substituted therefor:

Panels for boards of inquiry

4.—(1) The Lieutenant Governor in Council shall appoint a panel of persons for each designated municipality to act as members of boards of inquiry.

Recommendations for appointment

(2) One-third of the members of the panel shall be persons who are members of the Law Society of Upper Canada who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Idem

(3) One-third of the members of the panel shall be persons, other than police officers, who are jointly recommended for appointment by the board of commissioners of police of the designated municipality, or, where there is no board, the council, and by the police association, if any.

(4) If the joint recommendations referred to in subsection (3) are not submitted to the Attorney General in writing within the time that the Attorney General may specify, one-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Failure to make joint recommendations

(5) Before making the recommendation referred to in subsection (4), the Attorney General and Solicitor General shall consider any recommendations made by the board of commissioners of police or council alone or the police association alone.

Individual recommendations to be considered

(6) One-third of the members of the panel shall be persons recommended for appointment by the council of the designated municipality.

Recommendations for appointment

(7) If the recommendations referred to in subsection (6) are not submitted to the Attorney General in writing within the time that the Attorney General may specify, one-third of the members of the panel shall be persons, other than members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Failure to make recommendations

(8) Appointments to the panel shall be for a term of two years and a person who is appointed may be reappointed for a further term or terms not exceeding, in each instance, two years.

Term

(9) A member of the panel whose term expires without re-appointment continues in office for the purpose of completing the work of a board of inquiry to which the member was assigned before the expiration of the term.

Continuance in office for uncompleted assignments

(10) Notwithstanding subsection 34 (1), the members of the Police Complaints Board, except the chairman, constituted under the *Metropolitan Police Force Complaints Project Act, 1981* shall act as members of boards of inquiry under this Act until such time as the panel referred to in subsection (1) is appointed and members of the Police Complaints Board appointed from the groups set out in subsections 4 (4), (5) and (6), respectively, of the *Metropolitan Police Force Complaints Project Act, 1981* shall be deemed to be recommended under subsections (2), (3) and (6) of this section, respectively.

Members of Police Complaints Board under 1981, c. 43

(11) The members of the panel shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council.

Remuneration

4

Bill 4 METRO. TORONTO POLICE FORCE COMPLAINTS 1987

6. Subsection 5 (1) of the said Act is amended by striking out "Metropolitan Police Force" in the second and third lines and inserting in lieu thereof "police force".

7. Subsection 6 (1) of the said Act is amended by striking out "Metropolitan Toronto" in the second line and inserting in lieu thereof "the designated municipality".

8. Subsection 11 (6) of the said Act is amended by adding at the end thereof "the chief of police, the complainant and the subject officer".

9. Subsection 14 (7) of the said Act is amended by inserting after "higher" in the second line "or, if none, a senior officer who is not a member of the police association".

10. Section 16 of the said Act is amended by striking out "the officer may appeal" in the third line and inserting in lieu thereof "any appeal therefrom shall be taken".

11. Section 21 of the said Act is repealed and the following substituted therefor:

Report

21.—(1) Where, after making a review, the Commissioner is of the opinion that a police practice or procedure should be altered, the Commissioner shall report the opinion and any recommendations to the board of commissioners of police of the designated municipality or, where there is no board, the council, to the chief of police and to the police association, if any.

Idem

(2) Where, as a result of any matter dealt with under this Act, the Commissioner is of the opinion that a practice or procedure or law affecting the resolution or prevention of public complaints should be altered or implemented, the Commissioner shall report the opinion and any recommendations to the board of commissioners of police of the designated municipality or, where there is no board, the council, to the chief of police and to the police association, if any.

Idem

(3) Within ninety days of receiving a report under subsection (1) or (2), the board of commissioners of police or council, as the case may be, shall forward the report along with their comments and any comments submitted to them by the chief of police or the police association, to the Attorney General, the Solicitor General and the Commissioner.

12. Subsection 22 (5) of the said Act is amended by inserting after "subsection 4 (3)" in the fifth line "or (4), as the case

1987 METRO. TORONTO POLICE FORCE COMPLAINTS Bill 4 5

may be" and by striking out "4 (4)" in the seventh line and inserting in lieu thereof "4 (6) or (7), as the case may be".

13.—(1) Clause 23 (2) (b) of the said Act is amended by striking out "where an appeal" in the first line and inserting in lieu thereof "in respect of an appeal that".

(2) Clause 23 (17) (a) of the said Act is amended by striking out "Metropolitan Police Force" in the first and second lines and inserting in lieu thereof "police force".

(3) Clause 23 (17) (b) of the said Act is amended by striking out "Metropolitan Police Force" in the first and second lines and inserting in lieu thereof "police force".

(4) Subsection 23 (20) of the said Act is amended by striking out "Metropolitan Board of Commissioners of Police" in the first line and inserting in lieu thereof "board of commissioners of police for the designated municipality or, where there is no board, the council".

14. Subsection 26 (1) of the said Act is amended by striking out "Metropolitan Police Force" in the second and third lines and inserting in lieu thereof "police force".

15. Section 29 of the said Act is amended by striking out "The Municipality of Metropolitan Toronto" in the second and third lines and inserting in lieu thereof "a designated municipality".

16. Section 31 of the said Act is amended by adding thereto the following clause:

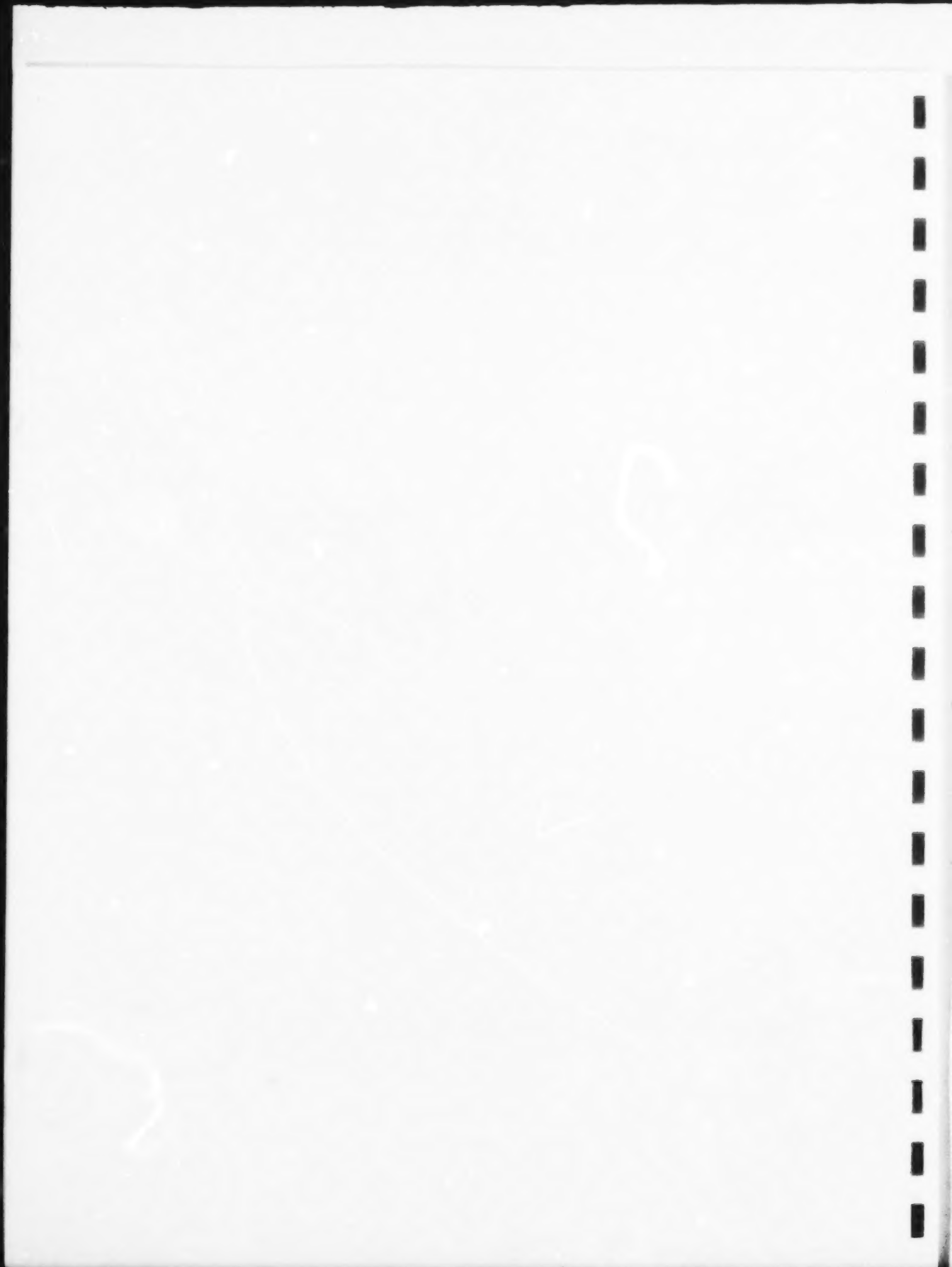
(ca) designating a municipality that has passed a by-law under section 2a as a municipality to which this Act applies.

17. Section 36 of the said Act is repealed and the following substituted therefor:

36. The short title of this Act is the *Police Force Complaints Act, 1984*. Short title

18e. This Act comes into force on the day it receives Royal Assent. Commence-
ment

19. The short title of this Act is the *Metropolitan Toronto Police Force Complaints Amendment Act, 1987*. Short title





Government
of Ontario

Metropolitan Toronto Police Force Complaints Act, 1984

Statutes of Ontario, 1984
Chapter 63

as amended by
1986, Chapter 31

and

Ontario Regulation 494/85

CHAPTER 63

Metropolitan Toronto Police Force Complaints Act, 1984

1. In this Act,

Interpretation

- (a) "Bureau" means the Public Complaints Investigation Bureau;
- (b) "chief of police" means the chief of police of the Metropolitan Police Force;
- (c) "Commissioner" means the Public Complaints Commissioner appointed under this Act;
- (d) "complainant" means a member of the public who makes a complaint in accordance with the provisions of this Act;
- (e) "complaint" means an allegation or allegations, made orally or in writing, by a member of the public, concerning the misconduct of a police officer;
- (f) "inquiry" means an allegation or allegations concerning conduct of a police officer that does not amount to "misconduct";
- (g) "misconduct" means an act or omission on the part of a police officer that constitutes an offence under the Code of Offences set out in the Schedule to Regulation 791 of Revised Regulations of Ontario, 1980, made under the *Police Act*;
- (h) "officer in charge" means the police officer who at any particular time, while on duty, is in charge of and responsible for, the proper functioning of a police facility;
- (i) "police officer" means a police officer on the Metropolitan Police Force;
- (j) "prescribed" means prescribed by the regulations;

R.S.O. 1980,
c. 381

2	Chap. 63	POLICE FORCE COMPLAINTS	Sec. 1
	(k)	"regulations" means the regulations made under this Act;	
	(l)	"subject officer" means a police officer who is the subject of a complaint. 1984, c. 63, s. 1.	
Application of Act	2.	This Act applies to complaints and inquiries made by members of the public respecting the conduct of police officers on the Metropolitan Police Force and hearings under this Act and disciplinary proceedings under the <i>Police Act</i> and the regulations thereunder arising out of such complaints. 1984, c. 63, s. 2.	
R.S.O. 1980, c. 381			
Appointment of Public Complaints Commissioner	3.—(1)	The Lieutenant Governor in Council shall appoint a Public Complaints Commissioner, to hold office for a term not exceeding five years, to exercise the powers and perform the duties assigned to him by this Act and the regulations.	
Re-appointment	(2)	The Commissioner may be reappointed for a further term or terms not exceeding, in each instance, five years.	
Officers, etc.	(3)	Such officers and employees as are considered necessary from time to time for the purposes of this Act may be appointed under the <i>Public Service Act</i> .	
R.S.O. 1980, c. 418			
Remuneration	(4)	The Commissioner shall be paid such remuneration and allowance for expenses as may be fixed by the Lieutenant Governor in Council.	
Records	(5)	The Commissioner shall maintain copies of all records, reports and other materials received by him under this Act.	
Monitoring handling of complaints and inquiries	(6)	The Commissioner shall monitor the handling of complaints and inquiries by the Bureau and the chief of police.	
Annual report	(7)	The Commissioner shall report annually on the affairs of his office to the Solicitor General and to the Attorney General and the Attorney General shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.	
Summary of decisions	(8)	The Commissioner shall cause to be prepared and published periodically a summary of the decisions, and the reasons therefor, made by the boards of inquiry under this Act.	
Audit	(9)	The accounts of the Commissioner shall be audited annually by the Provincial Auditor. 1984, c. 63, s. 3.	

4.—(1) The Lieutenant Governor in Council shall appoint a panel of persons to act as members of boards of inquiry.

Panel for
boards of
inquiry

(2) One-third of the members of the panel shall be persons who are members of the Law Society of Upper Canada who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Recommendations
for
appointment

(3) One-third of the members of the panel shall be persons, other than police officers, the appointment of whom the Metropolitan Board of Commissioners of Police and the Metropolitan Toronto Police Association have jointly recommended in writing to the Attorney General. 1984, c. 63, s. 4 (1-3).

Idem

(3a) If the joint recommendations referred to in subsection (3) have not been submitted to the Attorney General within the time that the Attorney General has specified under subsection (6), one-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Failure to
make joint
recommendations

(3b) Before making the recommendation referred to in subsection (3a), the Attorney General and the Solicitor General shall consider any recommendations made by the Metropolitan Board of Commissioners of Police alone or the Metropolitan Toronto Police Association alone. 1986, c. 31, s. 1, *part*.

Individual
recommendations to be
considered

(4) One-third of the members of the panel shall be persons recommended by the council of The Municipality of Metropolitan Toronto to the Attorney General for appointment. 1984, c. 63, s. 4 (4).

Idem

(4a) If the recommendations referred to in subsection (4) have not been submitted to the Attorney General within the time that the Attorney General has specified under subsection (6), one-third of the members of the panel shall be persons, other than members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General. 1986, c. 31, s. 1, *part*.

Failure to
make
recommendations

(5) Appointments to the panel shall be for a term of two years and a person who is appointed may be reappointed for a further term or terms not exceeding, in each instance, two years.

Term

4 Chap. 63 POLICE FORCE COMPLAINTS Sec. 4 (6)

Idem (6) Recommendations made under subsections (3) and (4) shall be submitted to the Attorney General within such time as he may specify.

Members of Police Complaints Board under 1981, c. 43 (7) Notwithstanding subsection 34 (1), the members of the Police Complaints Board, except the chairman, constituted under the *Metropolitan Police Force Complaints Project Act, 1981* shall act as members of boards of inquiry under this Act until such time as the panel referred to in subsection (1) is appointed and members of the Police Complaints Board appointed from the groups set out in subsections 4 (4), (5) and (6), respectively, of the *Metropolitan Police Force Complaints Project Act, 1981* shall be deemed to be recommended under subsections (2), (3) and (4) of this section, respectively.

NOTE: Subsection 34 (1) as mentioned in subsection (7) above repealed the *Metropolitan Police Force Complaints Project Act, 1981*, being chapter 43. See—1984, c. 63, s. 34 (1).

Remuneration (8) The members of the panel shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council. 1984, c. 63, s. 4 (5-8).

Establishment of Bureau 5.—(1) The chief of police shall establish and maintain for the purposes of this Act a branch of the Metropolitan Police Force to be known as the Public Complaints Investigation Bureau.

Staff (2) The chief of police shall ensure that the Bureau is supplied with sufficient staff to effectively receive, record and investigate complaints and inquiries. 1984, c. 63, s. 5.

Where complaints may be made 6.—(1) A member of the public may make a complaint at the Bureau, at any police station in Metropolitan Toronto or at the office of the Commissioner.

Information (2) The person who receives the complaint shall record the complaint in the prescribed form and shall furnish the complainant with a prescribed statement that sets out the procedures that will be followed respecting the complaint and the rights under this Act of the complainant, together with a copy of the complaint.

Preliminary investigation (3) Where a complaint is recorded at a police station, the officer in charge of the station shall take all reasonable steps to ensure that all available evidence is gathered that may be lost if not secured immediately and, if appropriate, ensure that such other preliminary investigation as may be warranted is conducted and that a report concerning such preliminary

investigation is prepared and forwarded to the person in charge of the Bureau.

(4) Where a complaint is recorded at a police station, the person recording the complaint shall forward forthwith to the Bureau and to the Commissioner a copy of the complaint.

Copy of
complaint

(5) Where a complaint is recorded at the Bureau, the person recording the complaint shall forward forthwith to the Commissioner a copy of the complaint.

Idem

(6) Where a complaint is recorded at the office of the Commissioner, the person recording the complaint shall forward forthwith to the Bureau a copy of the complaint. 1984, c. 63, s. 6.

Idem

7.—(1) Where a complaint is made by a person not directly affected by the incident, the Commissioner, as soon as practicable after receiving the complaint, shall in writing notify the person directly affected by the incident that a complaint has been made under this Act and advise him that he is entitled to be the complainant.

Notification
by Commis-
sioner

(2) Where the person directly affected by the incident is not known or can not be found or does not, within thirty days of the date of the notification, file with the Commissioner a written request to be the complainant in the matter, no further action shall be taken under this Act in respect of such complaint.

Where no
action to
be taken

(3) Nothing in subsection (2) shall prevent the chief of police from taking any disciplinary action that he could otherwise take under the *Police Act* and the regulations thereunder, and the chief of police shall notify the Commissioner if any such action is taken and the result thereof and either the chief of police or the Commissioner shall then notify the complainant.

Action under
R.S.O. 1980,
c. 381

(4) For the purposes of this section a person who observes an incident shall be deemed to be a person directly affected by the incident. 1984, c. 63, s. 7.

Person
deemed
directly
affected

8.—(1) Upon receipt of a complaint, the person in charge of the Bureau may, with the consent of the Commissioner, reclassify any of the separate allegations within the complaint as an inquiry, and the complainant and the subject officer shall be notified forthwith.

Reclassifi-
cation
by Bureau
chief

(2) The person in charge of the Bureau shall determine whether any investigation is required in respect of an inquiry,

Response

and if it is, cause such investigation to be conducted, respond to the complainant in writing within sixty days of receipt of the complaint and forward a copy of the response to the Commissioner forthwith.

Reclassification during investigation

(3) The person in charge of the Bureau may, during the course of an investigation under subsection (2), reclassify any of the separate allegations within the inquiry as a complaint, and the complainant, the subject officer and the Commissioner shall be notified forthwith.

Personal record

(4) No reference shall be made in the personal record of any police officer to an inquiry resolved in accordance with subsection (2). 1984, c. 63, s. 8.

Police officer to be informed

9. The person in charge of the Bureau shall inform forthwith the subject officer of the substance of the complaint in the prescribed form, unless, in the opinion of such person, to do so might adversely affect any investigation of the complaint. 1984, c. 63, s. 9.

Informal resolution

10.—(1) The person in charge of the Bureau shall consider whether a complaint can be resolved informally and, with the consent of the complainant and the subject officer, may attempt to so resolve the complaint.

Record of informal resolution

(2) Where a complaint is resolved informally, a record shall be made of the manner in which the complaint was resolved and the complainant and the subject officer shall each signify in writing his agreement to such resolution.

Copy of record to be furnished

(3) A copy of a record made under subsection (2) shall be furnished forthwith to the Commissioner, the complainant and the subject officer.

Informal resolution

(4) A complaint may be resolved informally by the person in charge of the Bureau in accordance with the procedures in this section at any time during the course of or after an investigation,

Where complaint to continue

(5) Notwithstanding subsection (1), where the Commissioner is of the opinion that the informal resolution was obtained as a result of a misunderstanding, a threat or other improper pressure, the Commissioner may notify the person in charge of the Bureau that the complaint shall continue and give reasons therefor in writing to the person in charge of the Bureau, the subject officer, the complainant and the chief of police and in such event the complaint shall continue to be treated as a complaint under this Act.

Sec. 11 (5)

POLICE FORCE COMPLAINTS

Chap. 63

7

(6) The decision of the Commissioner under subsection (5) shall be deemed to be made in the exercise of a statutory power of decision within the meaning of the *Judicial Review Procedure Act*.

Review of
decision
R.S.O. 1980,
c. 224

(7) A complaint may be resolved informally by the Commissioner in accordance with the procedures in this section at any time during the course of an investigation or review by the Commissioner.

Informal
resolution by
Commis-
sioner

(8) No reference shall be made in the personal record of a subject officer to a complaint resolved under this section, except where misconduct has been admitted by the subject officer. 1984, c. 63, s. 10.

No reference
in personal
record of
subject
officer

11.—(1) Where a complaint is not resolved informally, the person in charge of the Bureau shall cause an investigation to be made forthwith into the complaint in accordance with prescribed procedures.

Investigation

(2) The person in charge of the Bureau shall forward to the Commissioner, the complainant and the subject officer an interim report in the prescribed form providing a summary of the investigation to date not later than thirty days after receipt of the complaint and shall forward further interim reports to the same persons on a monthly basis during the course of the investigation.

Interim
reports

(3) Notwithstanding subsection (2), the person in charge of the Bureau may decide not to make a report to the complainant or the subject officer where, in his opinion, to do so might adversely affect the investigation of the complaint or where there are no new matters to report, in which case the person in charge of the Bureau shall forthwith notify the Commissioner of the reasons for his decision.

Exception

(4) Where an investigation has been completed, the person in charge of the Bureau shall cause a final investigation report in the prescribed form to be prepared and shall forward a copy thereof to the Commissioner, the chief of police, the complainant and the subject officer.

Final
report

(5) A final investigation report prepared under subsection (4) shall,

Idem

(a) contain a summary of the complaint and a description of the alleged misconduct by the subject officer;

- (b) contain a summary of the investigation and of information obtained from the complainant, the subject officer and witnesses, if any; and
- (c) contain a description and analysis of any physical evidence obtained.

Further investigation at request of Commissioner

(6) The Commissioner may, upon receipt of a final investigation report, request that the chief of police cause further investigation to be made into the complaint and the results of any such investigation shall be forwarded to the Commissioner. 1984, c. 63, s. 11.

Withdrawal of complaint

12.—(1) All complaints and inquiries shall be dealt with in accordance with this Act, and shall not be withdrawn except in accordance with this Act.

Notice

(2) A complainant may withdraw a complaint at any time by giving notice, in the prescribed form, to the person in charge of the Bureau, who shall forward a copy thereof to the Commissioner and the subject officer.

Where to continue as complaint

(3) Notwithstanding subsection (2), where the Commissioner is of the opinion that the complainant withdrew the complaint as a result of a misunderstanding, a threat or other improper pressure, the Commissioner may notify the person in charge of the Bureau that the complaint shall continue, and give reasons therefor, in writing, to the person in charge of the Bureau, the subject officer, the complainant and the chief of police and in such event the complaint shall continue to be treated as a complaint under this Act.

Review of decision

R.S.O. 1980, c. 224

(4) The decision of the Commissioner to cause the complaint to continue shall be deemed to be made in the exercise of a statutory power within the meaning of the *Judicial Review Procedure Act*.

Disciplinary action under R.S.O. 1980, c. 381

(5) Notwithstanding subsection (2), where a complaint has been withdrawn by a complainant, such withdrawal shall not prevent the chief of police from taking any disciplinary action that he could otherwise take under the *Police Act* and the regulations thereunder and the chief of police shall notify the Commissioner if any such action is taken and the result thereof. 1984, c. 63, s. 12.

Where complaint not to be dealt with

13.—(1) Where it appears to the chief of police that,

- (a) a complaint is frivolous, vexatious or made in bad faith;

- (b) a complaint is not within the jurisdiction of this Act;
or
- (c) a complaint is one that could or should be more
appropriately dealt with under an Act other than
this Act,

the chief of police may decide that the complaint or any part
thereof not be dealt with under this Act.

(2) The chief of police shall notify the Commissioner, the
complainant and the subject officer of any decision made
under subsection (1). Notice

(3) Notwithstanding subsection (1), the decision of the
chief of police shall not prevent the chief from taking any dis-
ciplinary action that he could otherwise take under the *Police*
Act and the regulations thereunder. Disciplinary
action under
R.S.O. 1980,
c. 381

(4) The complainant may, within thirty days of receiving
notification under subsection (2), request the Commissioner
to review the decision made under subsection (1), in which
case all the provisions of this Act relating to a review by the
Commissioner apply with necessary modifications. Review by
Commis-
sioner

(5) Notwithstanding subsection (4), where the Commis-
sioner is satisfied that there are reasonable grounds for grant-
ing an extension, the Commissioner may extend the time for
requesting a review. 1984, c. 63, s. 13. Extension
of time

14.—(1) The chief of police shall review a final investiga-
tion report and he may order such further investigation as he
considers advisable and may, unless he decides that no action
is warranted, Powers and
duties of
chief of
police

- (a) cause an information alleging the commission of an
offence by the subject officer to be laid and refer
the matter to the Crown attorney for prosecution;
- (b) order that one or more of the allegations contained
in the complaint be heard by a board of inquiry;
- (c) cause disciplinary proceedings to be taken under the
Police Act and the regulations thereunder; and R.S.O. 1980,
c. 381
- (d) after giving the subject officer ten working days to
reply, either orally or in writing, to the complaint,
counsel or caution the subject officer regarding his
conduct,

but where the chief of police takes action under clause (b), (c) or (d), he shall not take action under any other of those clauses.

Hearing
not stayed

R.S.O. 1980,
c. 381

(2) Where the chief of police causes an information to be laid under clause (1) (a), such action shall not stay any disciplinary proceedings under the *Police Act* or any hearing by a board of inquiry unless the presiding officer or the board, as the case may be, is of the opinion that the hearing should be stayed until the court proceedings have been concluded.

Review by
Commissioner

(3) A subject officer may within thirty days of the taking of any action under clause (1) (d), request the Commissioner to review the action, in which case all the provisions of this Act relating to a review by the Commissioner shall apply with necessary modifications.

Extension
of time

(4) Notwithstanding subsection (3), where the Commissioner is satisfied that there are reasonable grounds for granting an extension, the Commissioner may extend the time for requesting a review.

Expunging
from
personal
record

(5) Any action taken under clause (1) (d) shall be expunged from the personal record of the subject officer upon the expiration of a period of two years during which no other disciplinary action has been noted on the record.

Notice of
action taken

(6) The chief of police shall give forthwith written notice of any action taken by him under subsection (1) or of his decision that no action is warranted to the Commissioner, the complainant and the subject officer and, where his decision is that no action is warranted or he has taken action under clause (1) (d), the chief of police shall give his reasons therefor.

Designation
by chief
of police

(7) The chief of police may designate any police officer of the rank of inspector or higher to exercise any of his powers and perform any of his duties under this Act and the police officer so designated has the powers and duties set out in the designation and where any power is conditional on the opinion of the chief of police, the requisite opinion shall be that of the police officer so designated. 1984, c. 63, s. 14.

Application
of s. 23
R.S.O. 1980,
c. 381

15.—(1) Where the chief of police has caused disciplinary proceedings to be taken under the *Police Act* and the regulations thereunder, subsections 23 (6), (8), (13), (14) and (15) of this Act apply with necessary modifications to a hearing held in connection with such proceedings.

(2) The chief of police or, if he is not the person who holds a hearing referred to in subsection (1), the person who holds the hearing shall give forthwith written notice of his decision together with his reasons therefor to the Commissioner, the complainant and the subject officer. 1984, c. 63, s. 15.

Notice of
decision

16. Where a hearing referred to in subsection 15 (1) has been held and a penalty has been imposed upon a subject officer, the officer may appeal in accordance with the provisions of this Act and not as provided in the *Police Act* and the regulations thereunder. 1984, c. 63, s. 16.

Police officer
may appeal

R.S.O. 1980,
c. 381

17.—(1) A notice of appeal under section 16 shall be served on the Commissioner and the chief of police within fifteen days after the subject officer receives notice of the penalty imposed, and the Commissioner shall notify the complainant forthwith.

Notice of
appeal

(2) Where a notice of appeal is filed after the time set out in subsection (1), the Commissioner shall assign, in accordance with the regulations, the matter to a member of the panel appointed on a recommendation made under subsection 4 (2) who may, if satisfied that there are reasonable grounds for doing so, extend the time for appealing and give such directions as he considers proper consequent upon the extension. 1984, c. 63, s. 17.

Extension
of time

18.—(1) Notwithstanding any other provision of this Act, the Commissioner may investigate the allegations in the complaint,

Commissioner
may
investigate

(a) at any time after he receives the first interim report under subsection 11 (2) or the thirty-day period mentioned therein has expired;

(b) upon the request of the chief of police; or

(c) where he has reasonable grounds to believe that there has been undue delay or other exceptional circumstances in the conduct of an investigation under section 11.

(2) A decision to take action under clause (1) (c) shall be deemed to be made in the exercise of a statutory power within the meaning of the *Judicial Review Procedure Act*.

Review of
decision

R.S.O. 1980,
c. 224

(3) The Commissioner shall forthwith notify the chief of police in writing of his intention to conduct an investigation under clause (1) (a) or (c) and shall give his reasons therefor in writing.

Notice
to chief
of police

12	Chap. 63	POLICE FORCE COMPLAINTS	Sec. 18 (4)
Idem	(4) Where the Commissioner conducts an investigation under subsection (1), he shall forward to the complainant, the subject officer, the person in charge of the Bureau and the chief of police an interim report in the prescribed form providing a summary of the investigation to date, not later than thirty days after he has given notification of his intention to conduct an investigation, and shall forward further interim reports to the same persons on a monthly basis during the course of the investigation, and upon the completion of his investigation he shall prepare a final investigation report and forward a copy thereof to the same persons.		
Notice of action taken	(5) The chief of police, upon receipt of a final investigation report under subsection (4), shall review the report, together with any final investigation report prepared under subsection 11 (4), and shall make a decision in accordance with section 14 and shall notify all persons in accordance with subsection 14 (6).		
Delegation	(6) The Commissioner may designate any person appointed under subsection 3 (3) to exercise any of his powers and perform any of his duties under this Act, and the person so designated has the powers and the duties set out in the designation, and where any power is conditional upon the opinion of the Commissioner, the requisite opinion shall be that of the designated person. 1984, c. 63, s. 18.		
Request for review	19.—(1) Where a complainant is dissatisfied with the decision made on a disciplinary proceeding arising out of his complaint that is not a decision of a board of inquiry or with action taken by the chief of police under clause 14 (1) (d) or with a decision of the chief of police that no action is warranted, he may within thirty days of receipt of notification under subsection 14 (6) or 15 (2) request the Commissioner to review the matter.		
Extension of time	(2) Notwithstanding subsection (1), where the Commissioner is satisfied that there are reasonable grounds for granting an extension the Commissioner may extend the time for requesting a review.		
Hearing may be ordered	(3) Where the Commissioner receives a request under subsection (1), he shall review the matter and may, after such review, order a hearing by a board of inquiry if he believes that, in the public interest, such a hearing is required or he may decide to take no further action.		
Notice	(4) The Commissioner shall give forthwith written notice to the chief of police, the complainant and the subject officer of		

his decision under subsection (3) and, where his decision is to take no further action, shall give his reasons therefor.

(5) Where a subject officer has appealed under section 16 a hearing ordered under subsection (3) shall be heard together with that appeal. 1984, c. 63, s. 19. Where appeal under s. 16

20.—(1) For the purposes of an investigation under section 18 or a review under section 19, the Commissioner may, where he has reasonable grounds to believe that it is necessary to do so in furtherance of the investigation or review, after informing the chief of police, enter a police station and examine therein books, papers, documents and things related to the complaint. Powers on investigation or review

(2) For the purposes of an investigation or review, the Commissioner has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such investigation or review as if it were an inquiry under that Act. Powers on inquiry
R.S.O. 1980, c. 411

(3) The Commissioner may, in writing, appoint a person to make any investigation or review he is authorized to make and the person so appointed has all the powers and duties of the Commissioner relating to the investigation and the review. Appointment of person to make investigation or review

(4) The Commissioner shall issue a certificate of appointment to any person appointed to make an investigation or review under subsection (3), which certificate shall contain a photograph of the person appointed, and the person appointed, while exercising any powers or performing any duties in respect of the investigation or review, shall produce the certificate of appointment upon request. Identification

(5) The person appointed to make an investigation or review shall report the results of his investigation or review to the Commissioner. Report

(6) No person shall obstruct the Commissioner or a person appointed by him to make an investigation or review or withhold from him or conceal or destroy any books, papers, documents or things related to the investigation or review. Obstruction

(7) Where a justice of the peace is satisfied upon an *ex parte* application by the Commissioner or by a person appointed by him under subsection (3) that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, papers, documents or things relating to an investigation or review, the justice of the peace may issue an order authorizing the person making the application, together with such persons as he calls upon to assist Search warrant

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him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, papers, documents or things and to examine them, but every such entry and search shall be made between 6 a.m. and 9 p.m., standard time, unless the justice of the peace, by the order, otherwise authorizes.

Removal of
books, etc.

(8) The Commissioner may, upon giving a receipt therefor, remove any books, papers, documents or things examined under subsection (1) or (7) relating to the investigation or review and shall with reasonable dispatch cause to be made copies of such books, papers or documents and return them promptly thereafter to the person from whom they were removed.

Admissibility
of copies

(9) Any copy made as provided in subsection (8) and certified to be a true copy by the Commissioner is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, paper or document and its contents.

Appointment
of experts

(10) The Commissioner may appoint an expert to examine books, papers, documents or things examined under subsection (1) or (7). 1984, c. 63, s. 20.

Report

21.—(1) Where, after making a review, the Commissioner is of the opinion that a police practice or procedure should be altered, he shall report his opinion and recommendations to the Metropolitan Board of Commissioners of Police, the chief of police and the Metropolitan Toronto Police Association.

Idem

(2) Where, as a result of any matter dealt with under this Act, the Commissioner is of the opinion that a practice or procedure or law affecting the resolution or prevention of public complaints should be altered or implemented, he shall report his opinion and recommendations to the Metropolitan Board of Commissioners of Police, the chief of police and the Metropolitan Toronto Police Association.

Idem

(3) Within ninety days of receiving a report under subsection (1) or (2), the Metropolitan Board of Commissioners of Police shall forward such report along with their comments and any comments submitted to them by the chief of police or the Metropolitan Toronto Police Association, to the Attorney General, the Solicitor General and the Commissioner. 1984, c. 63, s. 21.

Where board
of inquiry to
be
constituted

22.—(1) Where,

- (a) the chief of police has ordered that a matter be heard by a board of inquiry;
- (b) a police officer has appealed under section 16; or
- (c) the Commissioner has, under subsection 19 (3), ordered a hearing,

a board of inquiry shall be constituted in accordance with this section.

(2) Where, in the opinion of the Commissioner, the hearing involves misconduct by a subject officer that is of a minor nature, he shall assign, in accordance with the regulations, a member of the panel who was appointed on a recommendation made under subsection 4 (2) to sit alone to conduct the hearing.

Assignment
to board
of inquiry

(3) Where, in the opinion of the Commissioner, the hearing involves misconduct by a subject officer that is of a serious nature, he shall assign, in accordance with the regulations, three members of the panel to conduct the hearing.

Idem

(4) Where, following a disciplinary hearing under the *Police Act* a board of inquiry is to be constituted, the board shall be constituted in accordance with subsection (3).

Constitution
of board
R.S.O. 1980,
c. 381

(5) The chairman of a board of inquiry constituted under subsection (3) or (4) shall be a person appointed to the panel on a recommendation made under subsection 4 (2), one member shall be a person appointed to the panel on a recommendation made under subsection 4 (3) and one member shall be a person appointed to the panel on a recommendation made under subsection 4 (4).

Who shall be
on board

(6) The chief of police, where he has ordered a hearing, and the Commissioner, where he has ordered a hearing, shall provide the parties with a concise statement of the allegations of misconduct to be heard by the board.

Statement
of alleged
misconduct

(7) Where, following a hearing referred to in subsection 15 (1), a board of inquiry has been constituted, the chief of police shall forward the record of that hearing, including the transcript, all documents, evidence and exhibits considered at that hearing, to the board.

Record

(8) Where the Commissioner has ordered the hearing he shall pay the costs of preparing the record. 1984, c. 63, s. 22.

Costs of
record

16

Chap. 63

POLICE FORCE COMPLAINTS

Sec. 23 (1)

When
hearing
de novo and
when on
record

23.—(1) The hearing before the board of inquiry shall be *de novo*, except where the chief of police has prepared a record under subsection 22 (7), in which case the hearing shall be on the record but the board may, in special circumstances, hear such evidence as the board considers advisable.

Parties

(2) The parties to a hearing shall include,

- (a) the chief of police, in respect of appeals instituted by the subject officer under section 16; and
- (b) the Attorney General, except where an appeal has been instituted by the subject officer under section 16.

Adding
parties

(3) A party may be added by the board at any stage of the hearing upon such terms as the board considers proper.

Attorney
General to
have carriage

(4) The Attorney General, where he is a party to the hearing, has carriage of the matter.

Notice of
hearing

(5) The board shall appoint a time for a hearing and give written notice thereof to the parties.

Opportunity
to examine
evidence

(6) The subject officer and the complainant shall be afforded an opportunity to examine before the hearing any physical or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Board not
to
communicate
with party

(7) The board conducting a hearing shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Oral
evidence

(8) The oral evidence given at the hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Adjournment
for view

(9) The board may, where it appears to be in the interests of justice, direct that the board and the parties and their counsel or representatives shall have a view of any place or thing, and may adjourn the hearing for that purpose.

Only
members at
hearing to
participate
in decision

(10) No member of the board shall participate in a decision following the hearing unless he was present throughout the

hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision shall be given unless all members so present participate in the decision.

(11) A decision of a member of a board of inquiry sitting alone and a decision of a majority of the members of a board comprising three members is a decision of the board.

Decision

(12) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to him within a reasonable time after the matter in issue has been finally determined.

Release of documents

(13) Notwithstanding section 12 of the *Statutory Powers Procedure Act*, the subject officer shall not be required to give evidence at the hearing nor shall any statement or answer required to be given by him in respect of the complaint made against him be admitted in evidence at the hearing, except with his consent.

Police officer not required to give evidence
R.S.O. 1980, c. 484

(14) Where the person in charge of the Bureau or the Commissioner attempts to resolve a complaint informally and the complaint is not so resolved, any statement or admission made during such attempt by the subject officer or by the complainant shall not be admitted in evidence at the hearing, except with the consent of the subject officer or the complainant, as the case may be.

Statement or admission not admissible in evidence

(15) No finding of misconduct by the subject officer shall be made unless the misconduct is proved beyond a reasonable doubt.

Proof of misconduct

(16) Where a board constituted under subsection 22 (2) finds the subject officer guilty of misconduct, it may,

Imposition of penalty

- (a) direct that days off not exceeding five days be forfeited;
- (b) direct that pay not exceeding three days pay be forfeited; or
- (c) reprimand the police officer.

(17) Where a board constituted under subsection 22 (3) finds the subject officer guilty of misconduct, it may,

Idem

- (a) dismiss the police officer from the Metropolitan Police Force, whereupon the officer is thereby dismissed;

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- (b) direct that the police officer resign from the Metropolitan Police Force and, in default of resigning within seven days, be summarily dismissed;
- (c) reduce the police officer in rank or gradation of rank and in pay in accordance with the rank to which he is reduced;
- (d) direct that days off not exceeding twenty days be forfeited;
- (e) direct that pay not exceeding five days pay be forfeited; or
- (f) reprimand the police officer, which reprimand may be in lieu of or in addition to any other penalty imposed.

Notice of decision (18) The board shall give forthwith written notice of its decision and the reasons therefor to the chief of police, the complainant, the subject officer, the Commissioner, the Solicitor General and the Attorney General.

No reference to hearing (19) No reference to a hearing conducted by the board shall be made in the personal record of the subject officer unless the board has made a finding of misconduct.

Costs may be paid (20) The Metropolitan Board of Commissioners of Police may, in such cases and to such extent as it thinks fit, pay any legal costs incurred by a subject officer in respect of a hearing conducted by a board and an appeal under section 24. 1984, c. 63, s. 23.

Appeal 24.—(1) A party to a hearing by a board may appeal within thirty days of the decision of the board to the Divisional Court.

Solicitor General and Attorney General entitled to be heard (2) The Solicitor General, and the Attorney General where he is not entitled to appeal under subsection (1), are entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

What may be appealed (3) An appeal under this section may be made on a question that is not a question of fact alone or from a penalty imposed under subsection 23 (17), or on both the question and the penalty. 1984, c. 63, s. 24.

How notice, etc., may be served 25. Any notice, report or other material required to be given, furnished, forwarded or otherwise served under this Act is sufficiently served if delivered personally or sent by

prepaid first class mail addressed to the person on whom service is required to be made at his last known or usual place of abode. 1984, c. 63, s. 25.

26.—(1) Every person engaged in the administration of this Act and the regulations, including a member of the Metropolitan Police Force, shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties and shall not communicate any such matter to any other person except,

Matters
confidential

- (a) as may be required in connection with the administration of this Act and the regulations or the *Police Act* and the regulations thereunder;
- (b) as may be required for the due enforcement of the law;
- (c) to his counsel; or
- (d) with the consent of the person to whom the matter relates.

R.S.O. 1980,
c. 381

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, except at a hearing under this Act or in a disciplinary proceeding under the *Police Act* and the regulations thereunder.

Testimony

(3) No record, report, writing or document arising out of a complaint is admissible or may be used in evidence in any civil suit or proceeding, except at a hearing under this Act or in a disciplinary proceeding under the *Police Act* and the regulations thereunder.

What is
inadmissible
in evidence

(4) No oral statement, answer or admission referred to in subsections 23 (13) and (14) is admissible or may be used in evidence in any civil suit or proceeding, except at a hearing under this Act or in a disciplinary proceeding under the *Police Act* and the regulations thereunder. 1984, c. 63, s. 26.

Idem

R.S.O. 1980,
c. 381

27. Section 146 of the *Courts of Justice Act, 1984* (photography at court hearing) applies with necessary modifications to a board hearing. 1984, c. 63, s. 27.

Application
of 1984,
c. 11, s. 146

28. The *Ombudsman Act* does not apply to anything done under this Act. 1984, c. 63, s. 28.

R.S.O. 1980,
c. 325 does
not apply

20	Chap. 63	POLICE FORCE COMPLAINTS	Sec. 29
Agreement for contributions	29. The Attorney General, with the approval of the Lieutenant Governor in Council, and The Municipality of Metropolitan Toronto may enter into an agreement to provide for the payment by the municipality to the Treasurer of Ontario on such terms and conditions as may be agreed upon of contributions in respect of the moneys required for the purposes of this Act. 1984, c. 63, s. 29.		
Offence	30. Any person who contravenes subsection 20 (6), subsection 26 (1) or section 27 is guilty of an offence and on conviction is liable to a fine of not more than \$2,000. 1984, c. 63, s. 30.		
Regulations	31. The Lieutenant Governor in Council may make regulations, (a) respecting the reporting and publication of decisions of boards of inquiry; (b) assigning duties to the Commissioner; (c) establishing a system that provides for the assignment of panel members on a rotational basis; (d) prescribing forms and providing for their use; and (e) prescribing any matter that by this Act is required to be or is referred to as prescribed. 1984, c. 63, s. 31.		
Advisory committee	32.—(1) There shall be a committee composed of, (a) the Deputy Attorney General; (b) the Deputy Solicitor General; (c) the chairman of the Ontario Police Commission; (d) the Commissioner; (e) the Assistant Deputy Attorney General-Criminal Law; and (f) such other persons as may be jointly appointed by the Attorney General and the Solicitor General.		
Duties	(2) It is the duty of the committee, (a) to maintain under review the practice and procedures under this Act;		

- (b) to receive and consider matters brought to the attention of the committee by any person having an interest in the operation of the system for handling complaints under this Act;
- (c) to make such recommendations as the committee considers appropriate for the improvement of the system for handling complaints; and
- (d) to perform such other duties or functions as the committee may be requested to perform by the Attorney General or the Solicitor General.

(3) Any recommendations made under clause (2) (c) shall be forwarded by the committee to both the Attorney General and the Solicitor General. 1984, c. 63, s. 32.

Recommendations

33. On or before the day that is three years after the day this Act comes into force, the Attorney General shall, after having reviewed the operation of the panel, the Board and the advisory committee referred to in sections 4 and 32 respectively, recommend to the Lieutenant Governor in Council whether those bodies should continue in existence or be terminated. 1984, c. 63, s. 33.

Recommendation of Attorney General

Repeal

34.—(1) The *Metropolitan Police Force Complaints Project Act, 1981*, being chapter 43, is repealed.

Proceedings continued under 1981, c. 43

(2) Notwithstanding subsection (1), the *Metropolitan Police Force Complaints Project Act, 1981* shall continue in force and apply to a complaint that is made before the day this Act comes into force, for the purpose of continuing the proceedings in respect of that complaint, but the proceedings at any Board hearing commenced after the day this Act comes into force shall be in accordance with the provisions of this Act.

35. This Act comes into force on the 21st day of December, 1984.

Commencement

36. The short title of this Act is the *Metropolitan Toronto Police Force Complaints Act, 1984*.

Short title

ONTARIO REGULATION 494/85

under the Metropolitan Toronto Police Force Complaints Act, 1984

GENERAL FORMS

1. A complaint shall be recorded in Form 1. O. Reg. 494/85, s. 1.
2. The subject officer shall be informed of the substance of the complaint in Form 1A. O. Reg. 494/85, s. 2.
3. The statement to be furnished under subsection 6 (2) of the Act to the person making the complaint shall be in Form 2. O. Reg. 494/85, s. 3.
4. A record of an informal resolution of a complaint shall be in Form 3. O. Reg. 494/85, s. 4.
5. An interim or final investigation report under subsection 11 (2), 11 (4) or 18 (4) of the Act shall be in Form 4. O. Reg. 494/85, s. 5.
6. A notice of withdrawal of a complaint shall be in Form 5. O. Reg. 494/85, s. 6.

BUREAU INVESTIGATIONS

7. An investigation under section 11 of the Act shall be pursued quickly and diligently and the investigator shall endeavour to obtain all information that may have a bearing on the complaint. O. Reg. 494/85, s. 7.
8. All information and evidence obtained in the investigation shall be recorded and preserved. O. Reg. 494/85, s. 8.
9. The investigator shall endeavour to interview the person making the complaint and the subject officer and to obtain written statements from them. O. Reg. 494/85, s. 9.
10. The investigator shall endeavour to interview the witnesses named by the person making the complaint and the subject officer and witnesses located as a result of the investigation and to obtain written statements from such witnesses. O. Reg. 494/85, s. 10.
11. The investigator shall endeavour to obtain photographs of all personal injuries or damage to property alleged and any other information and evidence that is relevant to the investigation and could only be preserved by way of photographs. O. Reg. 494/85, s. 11.
12. Where appropriate, the investigator shall attend at the scene of the alleged misconduct and obtain any relevant evidence. O. Reg. 494/85, s. 12.

13. The investigator shall endeavour to obtain all hospital records and medical reports related to the complaint. O. Reg. 494/85, s. 13.

14. The investigator shall make notes during or as soon as possible after completion of each investigative step and the notes shall be preserved. O. Reg. 494/85, s. 14.

15. Any information, notes or evidence, except physical evidence, that is required to be preserved under sections 8 and 14 shall be retained for a period of two years after the complaint is finally disposed of. O. Reg. 494/85, s. 15.

ASSIGNMENT OF PANEL MEMBERS

16. The Commissioner shall prepare three lists of names of persons appointed to the panel under subsection 4 (1) of the Act; one consisting of those persons recommended under subsection 4 (2) of the Act; one consisting of those persons recommended under subsection 4 (3) of the Act and one consisting of those persons recommended under subsection 4 (4) of the Act. O. Reg. 494/85, s. 16.

17. For the purposes of sections 17 and 22 of the Act, the Commissioner shall assign, to consider extending time to appeal or to conduct a hearing, as the case may be, the person whose name appears at the beginning of the appropriate list or lists. O. Reg. 494/85, s. 17.

18. The name of a person assigned to conduct a hearing shall, following such assignment, be removed from the beginning of the list and added to the end of the list. O. Reg. 494/85, s. 18.

19. If a person is unable to perform his or her duties or is unable to act within a time determined by the Commissioner to be reasonable, the Commissioner, upon being so informed, shall assign as a replacement the next person on the list, and the name of the person who is so replaced shall remain at the beginning of the list. O. Reg. 494/85, s. 19.

20. If, at any time, a person resigns as a member of the panel, the name of that person shall be deleted from the appropriate list. O. Reg. 494/85, s. 20.

21. If, at any time, a new person is appointed to the panel, the name of that person shall be placed at the end of the appropriate list. O. Reg. 494/85, s. 21.

APPENDIX H

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OATH OF AUXILIARY MEMBER

70. The oath to be taken and subscribed to by an auxiliary member of the Force shall be in Form 3. R.R.O. 1980, Reg. 791, s. 70.

Schedule

CODE OF OFFENCES

1. Any chief of police, other police officer or constable commits an offence against discipline if he is guilty of,

(a) DISCREDITABLE CONDUCT, that is to say, if he,

- (i) acts in a disorderly manner, or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force,
- (ii) is guilty of oppressive or tyrannical conduct towards an inferior in rank,
- (iii) uses profane, abusive or insulting language to any other member of a police force,
- (iv) wilfully or negligently makes any false complaint or statement against any member of a police force,
- (v) assaults any other member of a police force,
- (vi) withholds or suppresses a complaint or report against a member of a police force,
- (vii) is guilty of an indictable offence or an offence punishable upon summary conviction under the *Criminal Code* (Canada), or
- (viii) contravenes any provision of the *Police Act* or the regulations;

(b) INSUBORDINATION, that is to say, if he,

- (i) is insubordinate by word, act or demeanour, or
- (ii) without lawful excuse, disobeys, omits or neglects to carry out any lawful order;

(c) NEGLIGENCE OF DUTY, that is to say, if he,

- (i) without lawful excuse, neglects or omits promptly and diligently to perform a duty as a member of the police force,

(ii) idles or gossips while on duty,

(iii) fails to work in accordance with orders, or leaves an area, detachment, detail or other place of duty, without due permission or sufficient cause,

(iv) by carelessness or neglect permits a prisoner to escape,

(v) fails, when knowing where an offender is to be found, to report him or to make due exertions for bringing him to justice,

(vi) fails to report a matter that it is his duty to report.

(vii) fails to report anything that he knows concerning a criminal or other charge, or fails to disclose any evidence that he, or any person within his knowledge, can give for or against any prisoner or defendant,

(viii) omits to make any necessary entry in any official document or book,

(ix) feigns or exaggerates sickness or injury to evade duty,

(x) is absent without leave from or late for parade, court or any other duty, without reasonable excuse, or

(xi) is improperly dressed, dirty or untidy in person, clothing or equipment while on duty;

(d) DECEIT, that is to say, if he,

(i) knowingly makes or signs a false statement in an official document or book,

(ii) wilfully or negligently makes a false, misleading or inaccurate statement pertaining to official duties, or

(iii) without lawful excuse destroys or mutilates an official document or record or alters or erases an entry therein;

(e) BREACH OF CONFIDENCE, that is to say, if he,

(i) divulges any matter which it is his duty to keep secret,

(ii) gives notice, directly or indirectly, to any person against whom any warrant or summons has been or is about to be issued, except in the

lawful execution of such warrant or service of such summons,

- (iii) without proper authority communicates to the public press or to any unauthorized person any matter connected with the police force,
- (iv) without proper authority shows to any person not a member of the police force or any unauthorized member of the force any book, or written or printed paper, document or report that is the property of the police force,
- (v) makes any anonymous communication to the chief of police or superior officer or authority,
- (vi) canvasses, except as authorized by the Act or the regulations, any person in respect of a matter concerning the police force,
- (vii) signs or circulates a petition or statement in respect to a matter concerning the police force, except through the proper official channel or correspondence or established grievance procedure, or
- (viii) calls or attends any unauthorized meeting to discuss any matter concerning the police force;

(f) CORRUPT PRACTICE, that is to say, if he,

- (i) takes a bribe,
- (ii) fails to account for or to make a prompt, true return of money or property received in an official capacity,
- (iii) directly or indirectly solicits or receives a gratuity, present, pass, subscription or testimonial without the consent of the chief of police,
- (iv) places himself under a pecuniary or other obligation to a licensee concerning the granting or refusing of whose licence a member of the police force may have to report or give evidence,
- (v) improperly use his character and position as a member of the police force for private advantage,
- (vi) in his capacity as a member of the police force writes, signs or gives,

without the consent of the Chief of Police, a reference or recommendation to a member or former member of the police force, or any other police force, or

- (vii) without the consent of the chief of police, supports in any way an application for a licence of any kind;

(g) UNLAWFUL OR UNNECESSARY EXERCISE OF AUTHORITY, that is to say, if he,

- (i) without good and sufficient cause makes an unlawful or unnecessary arrest,
- (ii) uses any unnecessary violence to a prisoner or other person contacted in the execution of duty, or
- (iii) is uncivil to a member of the public;

(h) DAMAGE TO CLOTHING OR EQUIPMENT, that is to say, if he,

- (i) wilfully or carelessly causes waste, loss or damage to any article of clothing or equipment, or to any book, document or other property of the police force, or
- (ii) fails to report waste, loss or damage however caused;

(i) CONSUMING INTOXICATING LIQUOR IN A MANNER PREJUDICIAL TO DUTY, that is to say, if he,

- (i) while on duty is unfit for duty through drinking intoxicating liquor, or
- (ii) reports for duty and is unfit for duty through drinking intoxicating liquor, or
- (iii) except with the consent of a superior officer or in the discharge of duty, drinks or receives from any other person intoxicating liquor on duty, or
- (iv) demands, persuades or attempts to persuade another person to give or purchase or obtain for a member of the police force any intoxicating liquor, while on duty;

(j) LENDING MONEY TO A SUPERIOR; OR

(k) BORROWING MONEY FROM OR ACCEPTING A PRESENT FROM ANY INFERIOR IN RANK.

51 2. Any chief of police, other police officer or constable also commits an offence against discipline and shall be liable to punishment as provided in the regulations, if he connives at, abets or is knowingly an accessory to any offence against discipline under this code. R.R.O. 1980, Reg. 791, Sched.